

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

CR. NO. 15-4268 JB

ANGEL DELEON, et al.,

Defendants.

VOLUME 3

Transcript of Daubert/Rodriguez Hearing and
James Hearing Proceedings before The Honorable
James O. Browning, United States District Judge,
Las Cruces, Dona County, New Mexico, commencing
on November 29, 2017.

For the Government: Ms. Maria Armijo; Mr. Randy
Castellano; Mr. Matthew Beck

For the Defendants: Mr. Brock Benjamin, Mr. Richard
Sindel; Ms. Cori Harbour-Valdez; Mr. Jim Castle; Mr.
Robert Cooper; Mr. James Lahann; Mr. John Granberg;
Mr. Billy Blackburn; Mr. Scott Davidson; Ms. Amy
Jacks; Mr. Richard Jewkes; Mr. Marc Lowry; Ms.
Theresa Duncan; Ms. Amy Sirignano; Mr. Christopher
Adams; Mr. Michael Davis; Ms. Carey Bhalla; Mr. Ryan
Villa; Mr. Donovan Roberts; Ms. Angela Arellanes; Mr.
Samuel Winder

For the Defendants (Via telephone): Ms. Justine
Fox-Young

1 THE COURT: Good morning everyone. I
2 appreciate everybody making themselves available to
3 me this morning.

4 All right. We've got some new folks with
5 us today. Mr. Blackburn is here on behalf of
6 Mr. Garcia.

7 MR. BLACKBURN: Good morning, Your Honor.

8 THE COURT: Mr. Blackburn, good morning to
9 you. Let's see, I think Mr. Granberg has left? No.

10 MR. GRANBERG: No, I'm back.

11 THE COURT: Mr. Mondragon has left, and
12 Mr. Granberg is here.

13 MR. GRANBERG: Yes, Your Honor.

14 THE COURT: All right. Mr. Granberg, good
15 morning to you.

16 Ms. Fox-Young, you're on the phone at this
17 time?

18 MS. FOX-YOUNG: Yes, I am. Good morning,
19 Your Honor.

20 THE COURT: Good morning, Ms. Fox-Young.

21 Anyone else that I have missed as far as
22 changes from yesterday? All right. Well, good
23 morning to everyone.

24 All right. Well, I don't think I have any
25 announcements. It did look like there was a number

1 of filings that came in, so I guess we'll address
2 those in due course. Anything anybody needs to take
3 up before we put Mr. Martin back on the stand and
4 continue cross-examination of him?

5 MS. JACKS: I'd like to just bring
6 something to the Court's attention and make a
7 request.

8 THE COURT: Okay.

9 MS. JACKS: Your Honor, we had a discussion
10 with the marshals this morning about conditions in
11 the courtroom. And one of the things that we asked
12 was whether we could pitch in and get the defendants
13 lunch from a pizza or a sandwich place. The marshals
14 don't have an objection. But they asked us to bring
15 that up with you.

16 THE COURT: That's fine. Just as long as
17 the marshals know. I do think the marshals -- what I
18 heard is they don't want defense lawyers individually
19 bringing in food. And I can understand. I think we
20 all can appreciate that we don't want to have just
21 individual things going along. But as long as they
22 approve y'all buying them lunch and bringing it in,
23 that's fine. The taxpayers aren't going to be paying
24 for that, are they?

25 MS. JACKS: No, I think --

1 DEFENDANT PEREZ: Thank you, Judge.

2 THE COURT: I'm popular now? It will go
3 downhill from now, right?

4 DEFENDANT PEREZ: You got my vote.

5 THE COURT: I'm not running for anything.
6 That's the thing about a lifetime appointment, you
7 never run again.

8 All right. Mr. Martin, are you out there?

9 All right. Mr. Martin, I'll remind you
10 you're still under oath.

11 Ms. Jacks, if you wish to continue your
12 cross-examination of Mr. Martin, you may do so at
13 this time.

14 MS. JACKS: I would like to. I just want
15 to make sure -- I don't think the Elmo is on.

16 EXAMINATION

17 BY MS. JACKS:

18 Q. Good morning, Mr. Martin.

19 A. Good morning.

20 Q. Before I pick up where we left off
21 yesterday afternoon, I just want to -- you had a
22 little homework last night. And I'm just wondering
23 if you got a chance to do it?

24 A. Were you --

25 Q. Well, I think there were a couple of

1 things, so let's just start at the beginning.

2 A. Okay.

3 Q. One of the things I was asking you about,
4 the New Mexico Department of Corrections policies and
5 procedures that govern the classification of inmates
6 as a member of a Security Threat Group.

7 A. Right.

8 Q. And you were having some trouble
9 remembering what chapter and what those regulations
10 were. Did you, last night --

11 A. Those are all under the STIU policy.

12 Q. And were you able, last night, to find
13 those policies?

14 A. I was not, because on my personal computer
15 I'm not able to access MDC policies. And I thought I
16 might have had it on one of my PowerPoints, or maybe
17 on my personal laptop. But I did not.

18 Q. Okay. So you weren't able to do that. The
19 other thing -- I forgot, what was the other thing
20 that you were going to take a look at or do, do you
21 remember?

22 A. I don't.

23 Q. I'll have to go back and look at my notes,
24 because there was one other thing as well.

25 A. Okay.

1 Q. I wanted to pick up where we left off,
2 which was I was asking you about the bases for your
3 opinions in pages 1 through 6 of Document 1299 --

4 A. Okay.

5 Q. -- which was the Government's expert
6 notice. And I think where we left off was page 2,
7 where I marked "stop." So let's go back to that. We
8 were looking at C. And I think we talked about
9 Security Threat Group sanctions.

10 So I want to move on to the reasons for
11 sanctions. You're offering -- you're purporting or
12 proposing to offer an opinion about the reasons for
13 sanctions?

14 A. Correct.

15 Q. And can you tell me what would be informing
16 that particular opinion?

17 A. Those opinions would be based on
18 information that I've obtained from individuals that
19 are gang members, that are inactive gang members, and
20 from documentation that I've discovered.

21 Q. So interviews from active and inactive gang
22 members. And when you say documentation you've
23 discovered, things in people's files, in STIU files?

24 A. No, ma'am. When we do a cell inspections
25 or cell searches, sometimes we'll find items that

1 contain, for example, rules of conduct within the
2 gang. And those rules of conduct will say, you know,
3 if -- for example, if you fail to work out a couple
4 of days there, and if it's a mandatory issue, then
5 you're subject -- you could be subject to assault.

6 Q. So you're talking about writings that
7 particular inmates might have in their cell?

8 A. Correct.

9 Q. Do you have copies of those writings that
10 you're relying on?

11 A. I personally don't. But they belong to
12 STIU. I'm sure STIU has them.

13 Q. Have you reviewed any or obtained any in
14 preparation for offering some sort of expert opinion?

15 A. Not yet.

16 Q. Let's move on to the next thing in C: How
17 those sanctions are carried out. Would that be the
18 same sources of information? Interviews with inmates
19 and documents or writing that you discovered in the
20 course of being a correctional officer?

21 A. Correct, or gang unit officer.

22 Q. What about the next item? A description of
23 weapons manufactured and used. What informs that
24 opinion?

25 A. A description of weapons manufactured and

1 used?

2 Q. Yes.

3 A. Usually, individuals that make weapons are
4 usually things that are available to them inside the
5 prison system. So they could take maybe a light
6 switch apart. Sometimes, if they were porters, they
7 might be working out and take pieces of metal and
8 manufacture them into weapons. They might be out in
9 the rec yard, and take a piece of the fence apart,
10 and manufacture that as a weapon.

11 Q. Are these things that you personally
12 observed?

13 A. I've seen through interviews, and also
14 photographs of the weapons, and self-admittance,
15 individuals that have done it, yes.

16 Q. I just want to go back for a second and ask
17 you some just general questions about the prison.

18 A. Sure.

19 Q. Would you agree with me that prison is an
20 environment that's different than any other
21 environment?

22 A. Than like shopping at the mall or
23 something?

24 Q. Or -- right, prison is different than
25 everyday life here in the United States?

1 A. It's an environment of its own, yes.

2 Q. Right. And there is rules and ways of
3 conducting oneself that are different in prison than
4 in everyday life?

5 A. There are rules for inmates?

6 Q. Yeah.

7 A. Is that specifically what you're asking?

8 Q. Right. Maybe I should say codes of conduct
9 among inmates.

10 A. Yeah.

11 Q. And would you agree with me that things, or
12 slights that may be overlooked in everyday life, like
13 bumping into somebody, are things that can take on
14 added significance in a prison environment?

15 A. I would say that their awareness level is
16 higher. And their awareness and how they conduct
17 themselves and they carry themselves is -- their
18 awareness is higher inside the prison than it would
19 be out in the free world.

20 Q. And would you agree with me that things
21 that might be overlooked in the free world are things
22 that can be the subject of serious disputes in a
23 prison environment?

24 A. It could escalate really fast, yes.

25 Q. Specifically, I want to ask you about

1 weapons in prison. Are weapons a common thing in a
2 prison environment?

3 A. They can be, yes. I mean, in general
4 population, we don't conduct -- well, let's see how I
5 can answer your question. There is weapons in
6 prisons.

7 Q. People in prison get pretty ingenious about
8 making some sort of weapons to defend themselves if
9 something would happen?

10 A. Yes, they make weapons to defend themselves
11 and they make weapons to sell.

12 Q. And to sell?

13 A. Yes.

14 Q. So for profit, to get --

15 A. Correct.

16 Q. -- canteen items, or stamps --

17 A. I don't know.

18 Q. -- phone cards?

19 A. Buying drugs a lot of times as well.

20 Q. Drugs. So weapons are a method of commerce
21 in prison in some sense as well?

22 A. Yes.

23 Q. And would you agree with me that inmates in
24 prison make weapons -- just let me go back. Would
25 you agree with me that weapon manufacturing or

1 weapons possession in prison isn't limited to
2 disruptive group members or Security Threat Group
3 members; it's across the board?

4 A. Correct.

5 Q. And your information about -- that informs
6 your opinion about descriptions of weapons
7 manufactured and used, that's weapons that you've
8 seen or seen photographs of in the prison context
9 across the inmate population?

10 A. Yes. Or out, yes.

11 Q. So it's not strictly limited to gang
12 members or Security Threat Group members?

13 A. Correct.

14 Q. I want to move on to D: The rules and
15 requirements for members and associates to
16 participate in SNM-sanctioned violent crimes,
17 including homicides. You're proposing to offer an
18 opinion on that. And can you tell us what informs
19 that opinion?

20 A. Well, if -- okay, I understand the question
21 now. If a member of the SNM is going to take out
22 another member of the SNM, he has to be a member, or
23 he has to be a prospective member. He just --
24 otherwise, there is -- there will be greater
25 consequences. For example, if a Sureno Gang

1 member -- an SNM member is not going to get a Sureno
2 Gang member to hit another SNM member. That would be
3 against the rules that -- you know, that individual
4 himself would himself be in trouble. So it has to
5 be -- it would have to be an SNM member that would
6 have to carry out a sanctioned hit on another SNM
7 member.

8 Q. Okay. I understand that that's the opinion
9 that you'd like to offer. What my question is is
10 where did that come from?

11 A. From interviews of individuals that are
12 members of the SNM, and also members that are
13 denounced members of the SNM.

14 Q. And do you have copies of those interviews
15 or memos regarding those interviews that you've
16 acquired over the years to back up that opinion?

17 A. Yes. If I've interviewed individuals and
18 they've given me this type of information, I type out
19 all the interviews.

20 Q. So where is that stuff?

21 A. Any interviews that I type out usually will
22 go to the STIU administrator or the STIU coordinator.

23 Q. Well, have you gathered those in
24 preparation for your testimony as an expert in this
25 case?

1 A. Not yet.

2 Q. I want to go back because I was reminded
3 about the other issue that we sort of left for you to
4 think about overnight or check out overnight.

5 A. Sure.

6 Q. That was -- yesterday, there was -- I guess
7 you weren't quite sure of how you communicated with
8 the United States Attorney's Office in helping them
9 prepare this Document 1299. You said you might have
10 emailed them your opinions or the proposed areas of
11 your testimony. And I'm wondering if you had a
12 chance to go back and look to see?

13 A. Yes, I emailed it.

14 Q. You did?

15 A. Yes, because I looked it up.

16 Q. And did you locate that email last night?

17 A. Yes.

18 Q. And did you bring it to court today?

19 A. No.

20 Q. Why not?

21 A. You didn't ask me.

22 Q. Okay. What did you email them?

23 A. I emailed them pretty much everything
24 that's written on here.

25 Q. In the format that is written here in 1299?

1 A. No. Just the description of things that
2 I've done in that type of format.

3 Q. I'm sorry, the things on here you're
4 referencing is Document 1299, right?

5 A. Correct. I'm not sure what you're asking.
6 I gave them all the information about my
7 qualifications as an STIU gang unit.

8 Q. Okay. And I think you told us that
9 yesterday that you gave them --

10 A. Correct.

11 Q. -- your CV that has your training and
12 experience, right?

13 A. Right.

14 Q. But what I asked you was, in addition to
15 that, did you email them proposed areas of your
16 expertise, some sort of summary of your various
17 opinions, anything that is contained or referenced
18 here in this Document 1299?

19 A. I'm sure that I've spoken to them about it
20 or I've written it to them.

21 Q. Okay. Well, last night what you were going
22 to check was to see whether you had written it to
23 them.

24 A. Right.

25 Q. And you said that you did check, and that

1 you had written it to them?

2 A. Right.

3 Q. Is that still your testimony?

4 A. Yes.

5 Q. And so my question -- my next question is:
6 How long was the email that you wrote them that you
7 reviewed last night?

8 A. How long ago?

9 Q. No. How long was the email? How many
10 pages? This is 6 --

11 A. I probably emailed them about three or four
12 times.

13 Q. So you didn't bring any of those to court?

14 A. No, ma'am.

15 Q. But you still have them, right?

16 A. Yeah.

17 Q. So you could produce those if we request
18 you to bring them?

19 A. Right.

20 Q. So can you please bring those then next
21 time you're in court?

22 A. Sure, absolutely.

23 Q. All right. I want to move on.

24 I'm going to try to speed this up a little
25 bit. So I want to just go through the next few pages

1 of this notice, sort of paragraph by paragraph. So
2 let's take a look at the next paragraph. I'm going
3 to number this paragraph 1. So paragraph 1 reads:
4 "The Sindicato de Nuevo Mexico, SNM, Spanish for
5 syndicate of New Mexico is a powerful and violent
6 prison gang, which controlled drug distribution and
7 illegal activities within the New Mexico penal
8 system, and was also involved in street level
9 narcotics trafficking. It was formed in the early
10 1980s at the Penitentiary of New Mexico after a
11 prison riot at the penitentiary in February 1980.
12 During the prison riot, 12 correctional officers were
13 taken hostage and several of them were seriously
14 assaulted and raped by inmates. 33 inmates were
15 killed during the riot, and more than 200 were
16 injured."

17 Is that an opinion or testimony that you're
18 seeking to offer as an expert?

19 A. Yeah, it's an opinion.

20 Q. Okay. And first of all, do you have any
21 personal knowledge about the prison riot at the
22 Penitentiary of New Mexico? Were you there?

23 A. No.

24 Q. So you didn't see it, you didn't hear it?

25 A. No, I was not there.

1 Q. And in terms of the information about the
2 prison riot at the Penitentiary of New Mexico, and
3 what happened, how do you know about that?

4 A. I know about that because I've interviewed
5 individuals that were in the prison riot, and I've
6 interviewed SNM members that were present during the
7 prison riot. I've read books about the prison riot.
8 I've read the general -- I've read the general report
9 about the prison riot.

10 Q. Okay. Apart from reading books about it,
11 have you performed any sort of independent research
12 or analysis?

13 A. Like I said, I've gathered information from
14 individuals that were there at the prison riot, at
15 least three of them.

16 Q. And those individuals, do you have reports
17 or memorandum of the interviews that you had with
18 them?

19 A. I believe I do.

20 Q. And where are those?

21 A. STIU.

22 Q. And did you produce them to the Government
23 or anybody in preparation for your testimony?

24 A. I'm not sure if I did or not.

25 Q. When is the last time you saw them?

1 A. I can't even remember.

2 Q. So years ago?

3 A. Might have been a couple years ago.

4 Q. With respect to the SNM being a "powerful,
5 violent prison gang controlling drug distribution and
6 other illegal activities in the New Mexico penal
7 system and involved in street level narcotics
8 trafficking," is that based on information that you
9 received in speaking with inmates?

10 A. Yes. From multiple sources of inmates that
11 I've interviewed.

12 Q. And also in speaking with other
13 correctional officers?

14 A. Yeah. But mostly through inmate testimony
15 or interviews with inmates that have given me this
16 information.

17 Q. You said inmate testimony?

18 A. I meant interviews.

19 Q. Okay. You understand the difference
20 between an interview and testimony, right?

21 A. Yes, ma'am.

22 Q. Testimony is under oath --

23 A. I meant interview.

24 Q. What about, let's look at what I'm labeling
25 paragraph 2 in Document 1299, which essentially

1 discusses what happened after the prison riot, or
2 discusses the expansion of the SNM Gang, and various
3 slang, or ways that gang members refer to each other,
4 and the fact that SNM operates under a panel or mesa
5 of leaders.

6 A. Um-hum.

7 Q. What is the source of that information?

8 A. Again, it's historical acknowledgment from
9 interviews from SNM members that were part of that
10 panel or original members of the SNM.

11 Q. And are the interviews that you're
12 referencing interviews that you've conducted or
13 interviews that you've conducted and that other
14 people have conducted?

15 A. I know some of them are some that I've
16 conducted, and perhaps some that others have
17 conducted.

18 Q. And the interviews that you're referencing,
19 are they all interviews conducted by law enforcement
20 officials?

21 A. Yes.

22 Q. Let's look at what I'm labeling paragraph
23 3, which starts at the bottom of page 2. I'm just
24 going to ask you to take a moment to read that. And
25 I'm going to see if I can get the second part up

1 there. Let me just start with the first part of it,
2 then I'll stick the second part up.

3 A. Sure.

4 Q. Let's look at the bottom of page 2. There
5 is an opinion about how SNM Gang members and
6 associates communicate. Do you have an opinion on
7 that?

8 A. Yes.

9 Q. And how was that -- what's the basis of
10 that opinion? How did you form it?

11 A. The basis of that opinion is based on
12 individuals that I've interviewed that have given me
13 this information, as well as finding individuals
14 that -- when they're exiting the prison system, they
15 are going through -- we do what you call an exit
16 interview. And during these exit interviews
17 sometimes they'll go ahead and give us information
18 about this. Or the property that's being taken out
19 at the time, we search it, and at times we have been
20 able to find kites or letters going out about SNM
21 business.

22 Q. So interviews that you've conducted and
23 that other law enforcement agents have conducted with
24 inmates is one source, and the other source is
25 actually seeing evidence of these letters?

1 A. Correct.

2 Q. And are kites something that are used by
3 all sorts of prison inmates to communicate with each
4 other?

5 A. Yes.

6 Q. Not just members of Security Threat Groups
7 or disruptive groups?

8 A. Correct.

9 Q. Now, I want to look at the second part of
10 that paragraph that talks about when SNM members or
11 associates rejoin the communities what the
12 expectations of them are. Do you have any personal
13 knowledge of that? Have you seen or observed that
14 personally?

15 A. Not personally, no.

16 Q. And so the source of that would be your
17 interviews with inmates?

18 A. Correct.

19 Q. And other law enforcement agents'
20 interviews with inmates?

21 A. Correct.

22 Q. Let me just go back. Are you aware or have
23 you spoken to inmates that told you that they, in
24 fact, broke ties with their Security Threat Group
25 after they were released from prison?

1 A. Yeah. How I found out a lot of information
2 about what we would call individuals sent on a
3 mission when they get out of prison, and their
4 failure to carry out these missions. When they
5 return back into prison, and they are requesting
6 protective custody because they feel -- because they
7 did not carry out the mission, that they would be
8 subjects of assault.

9 During this time, during this interview
10 they've volunteered information as to what their
11 mission was, and that it's a mandatory thing for them
12 to carry out missions or to meet out in the public
13 and have a gathering together to again further the
14 mission of the SNM.

15 Q. So, if I understand you, the circumstances
16 of where you might come about some inmate telling you
17 this is when he wants to get something, like be
18 transferred to another unit, because -- when he's
19 coming back to prison?

20 A. It's just one of the sources and one of the
21 ways, yes.

22 Q. And just while we're on that topic, I just
23 want to follow up on something, because you said that
24 you've been an STIU officer for 11 years, right?

25 A. In the STIU unit for 11 years, yes.

1 Q. Okay. And you've interviewed thousands of
2 inmates?

3 A. I've interviewed a lot of inmates.

4 Q. And based on your -- because of your
5 position in a prison, if you interview somebody and
6 make a recommendation, or think that they're in
7 danger or think that they need to be moved for some
8 reason, and you make that recommendation, is your
9 recommendation generally followed by prison
10 management?

11 A. Yes.

12 Q. So inmates in prison know that you have
13 power to get them moved?

14 A. I don't know if they know I have power.
15 But I'm upfront with most of these guys. If I
16 interview them, and I say, "I'm going to recommend
17 this for you," they understand that I don't have the
18 power. I just have the recommendation.

19 Q. But they know that your word carries
20 weight?

21 A. Maybe, I guess, yeah.

22 Q. And would you agree with me that there are
23 prison inmates that are highly manipulative?

24 A. Yes.

25 Q. And one thing -- prison inmates can't

1 control too much about their environment? They're
2 told where they're going to be and when they're going
3 to sleep and when they're going to eat and what
4 they're going to do, right?

5 A. In segregation, yes.

6 Q. Well, when you're in prison, you don't get
7 to pick and choose where you're going to be, right?

8 A. You can request it. But I understand what
9 your question is. But, no. Yeah, in general terms,
10 no. I mean, we put them where they are.

11 Q. Would you agree with me that there are --
12 that one way that a prison inmate can get moved is to
13 convince you that they need to be moved?

14 A. Convince me how, ma'am?

15 Q. By telling you that they're in danger of
16 some sort?

17 A. If a person is telling me they're in
18 danger, I'm going to err on the side of caution, and
19 believe that they're in danger.

20 Q. And people can be in danger in prison for
21 all sorts of reasons, can't they?

22 A. There is a lot of different reasons, yes.

23 Q. I mean, one way that inmates are frequently
24 in danger is they use drugs, and they don't pay their
25 drug debts?

1 A. Correct.

2 Q. Another way is that they disrespect
3 somebody in some manner, that they're living with,
4 and they're worried that that person is going to
5 retaliate with violence?

6 A. It could happen.

7 Q. Okay. So there is all sorts of reasons
8 someone could be in danger in prison?

9 A. Correct.

10 Q. And one way that an inmate knows they can
11 get moved is by claiming they're in danger from a
12 prison gang, right?

13 A. Correct.

14 Q. So if an inmate tells you they're in danger
15 from a prison gang, you're going to err on the side
16 of caution and move that inmate?

17 A. Yes, while I investigate, yes.

18 Q. Let's go to paragraph 4, which is the top
19 of page 3. This is a paragraph about SNM exerting
20 control or operating on the streets of New Mexico.
21 And I want to ask you, in general, what forms the
22 basis of your opinion about how SNM supposedly
23 operates on the streets of New Mexico?

24 A. Again, the primary basis of that is from
25 interviews. Also, debriefing individuals that have

1 left the gang.

2 Q. And is part of your opinion based on
3 conversations with other law enforcement officers
4 that are actually enforcing the law on the streets of
5 New Mexico?

6 A. To some extent. But not really. Most
7 of -- again, most of the -- for example, if I'm
8 talking to outside law enforcement, they might
9 confirm that some of the things are going on, but not
10 the totality of information that I get from
11 individuals inside the prison.

12 Q. So these are people that are in prison that
13 are telling you about their exploits on the streets
14 of New Mexico?

15 A. They're telling us how the gang operates on
16 the streets, yes.

17 Q. And what would be the circumstances of
18 those type of discussions? Why would inmates be
19 discussing that with you?

20 A. Some of them have just given up on the
21 gang -- on the lifestyle, or they're debriefing, or
22 as part of a debriefing that we receive, or an
23 individual might just say, "You know what, I'm going
24 to tell you how things are done."

25 Q. Let me start with the concept of

1 debriefing. In your mind is a debriefing where
2 somebody sits down and supposedly tells you about all
3 of the criminal activity they've been involved in
4 over the course of their lives?

5 A. Well, one of the things that we do is we
6 allow them to write more or less a biography of their
7 activities within the gang. And then based on that,
8 we'll ask questions.

9 Q. So the person writes a multi-page biography
10 of their activities?

11 A. However long.

12 Q. Do you have those?

13 A. Do I have them?

14 Q. Right.

15 A. They are part of the -- the coordinator for
16 the RPP Program would have those.

17 Q. Okay. Have those been produced in
18 connection with your expert testimony?

19 A. They have not been produced, no.

20 Q. And yet you're relying on those
21 inmate-authored biographies to form your opinions?

22 A. Yes.

23 Q. And this debriefing -- that was my next
24 question. When an inmate debriefs and writes one of
25 these biographies and answers your questions, what do

1 they get, or what do they obtain in exchange for
2 that?

3 A. They obtain the ability to be segregated
4 from the gang that they're in, and a chance for them
5 to change. It's kind of a starting over, I guess a
6 clean slate, not being affiliated with the gang. And
7 in the course of time, within the RPP Program, you
8 know, eventually the tag will be removed from them as
9 a gang member.

10 Q. So just -- do inmates that want to join the
11 RPP Program --

12 THE COURT: Mr. Villa?

13 MR. VILLA: Sorry, Judge.

14 THE COURT: Is he okay? Are you all right?

15 MR. VILLA: He's okay.

16 MS. JACKS: Sorry that I'm putting Mr.
17 Perez to sleep.

18 THE COURT: He just may be resting. But
19 you're okay?

20 Ms. Jacks.

21 BY MS. JACKS:

22 Q. Mr. Martin, do inmates have to debrief and
23 provide you with this sort of information to be
24 accepted into the RPP Program?

25 A. That's one of the conditions, yes.

1 Q. Okay. And the RPP Program is a program
2 that actually has -- that actually allows inmates
3 eventually to gain more privileges within the prison
4 system, right?

5 A. It's categorized more like a Level 3. That
6 whole concept behind this is to reintegrate them,
7 eventually, into a congregate population, with
8 general population inmates, within time.

9 Q. And when an inmate does that, they get
10 expanded social visitation and expanded privileges as
11 an inmate, right?

12 A. Correct.

13 Q. And they also get more opportunities for
14 programming and self-enrichment?

15 A. That's the whole goal is to try to get them
16 more programming, if we can.

17 Q. Because prison can be really boring, right?

18 A. It can.

19 Q. Okay. So this information that's in
20 paragraph 4 is primarily based on these inmates
21 debriefs --

22 A. Some of them, yes.

23 Q. -- from inmates that are seeking to enter
24 the RPP Program and drop out?

25 A. Some of them are. Some of them are just

1 individuals that have been in prison for a long time;
2 they're still members of the SNM, but haven't
3 debriefed or dropped out. And I've known them for a
4 long time.

5 Q. And to a very small extent some of the
6 information in paragraph 4 is from conversations with
7 outside law enforcement?

8 A. Yes.

9 Q. Let's look at the next paragraph, which I'm
10 going to label paragraph 5, that talks about SNM
11 rivalries within the prison.

12 A. Correct.

13 Q. And the type of -- I guess it talks also
14 about recruitment and illegal activities within the
15 prison that SNM members supposedly engage in; is that
16 right?

17 A. Yes.

18 Q. So is the basis for those opinions the same
19 as basis for the opinions that we've discussed in the
20 other paragraphs? Basically interviews with inmates
21 and correctional officers and other law enforcement?

22 A. Yes. Also with the rival gangs.

23 Q. With members -- various members of rival
24 prison gangs?

25 A. Correct.

1 Q. Okay. Here is page 4. We're getting
2 through this slowly but surely. I've labeled
3 paragraph 6. It starts with "The SNM Gang sought to
4 the maintain its reputation for being strong and
5 powerful and maintain its membership to continue
6 functioning as an organization in prison and on the
7 streets." And then it talks about what would happen
8 if the SNM was perceived as weak. And it concludes
9 with the opinion or the statements, "A member of the
10 SNM Gang was expected to confront and attack any
11 suspected law enforcement informants, cooperating
12 witnesses, homosexuals, or sex offenders."

13 I'm sorry, let me go back. "A member of
14 the SNM Gang was expected to seek out and beat, stab,
15 or shoot rival gang members. Similarly, a member of
16 the SNM Gang was expected to confront and attack any
17 suspected law enforcement informants, cooperating
18 witnesses, homosexuals, or sex offenders."

19 So what is the basis for the information in
20 paragraph 6?

21 A. Again, the basis for these are interviews
22 I've had with inmates, SNM members, and ex-SNM
23 members.

24 Q. And anything in addition to interviews with
25 inmates?

1 A. Other correctional officers that have been
2 previously in STIU, or outside law enforcement
3 officers, like BCSO.

4 Q. And I think you told us that you were in
5 the habit of documenting the interviews that you had
6 with inmates --

7 A. Um-hum.

8 Q. -- in some manner. And that you haven't
9 accessed those interviews, but you think they are in
10 the possession of the Department of Corrections
11 somewhere, right?

12 A. Correct.

13 Q. What about discussions that you had with
14 other correctional officers or outside law
15 enforcement officers? Did you prepare memos or some
16 sort of report of those interactions?

17 A. Sometimes I do, and sometimes I don't. For
18 example, if I get information and I don't really need
19 to write it down, and then I get more information
20 that seems to be the same over and over, then I start
21 documenting that information.

22 Q. So there is some information that you get
23 that you just catalog in your head?

24 A. Correct.

25 Q. And there is no requirement from the

1 Department of Corrections policy and procedures that
2 you write things down or document it, is there?

3 A. Well, we're an information -- our unit is
4 based on the gathering of information. There is some
5 information that I don't, and some information that I
6 do.

7 Q. Is there any rule that you have to follow
8 about when you do write stuff down and when you
9 don't?

10 A. Well, if it's an issue concerning the
11 threat of the security of the institution, yes,
12 absolutely, then I'll write it down.

13 Q. Is that according to some sort of policy of
14 the Department of Corrections, or that's just your
15 general rule?

16 A. Well, no, it's an STIU policy.

17 Q. Can you tell us what policy that is, what
18 number the policy is?

19 A. I couldn't. I mean, STIU policies number
20 about 88 pages. So, you know, there is a policy in
21 there where you do write down -- document information
22 that's the nature -- that would meet the nature of a
23 security threat.

24 Q. Okay. And I just want to stop you there,
25 because I think yesterday I asked you about how many

1 pages was the New Mexico Department of Corrections
2 policies and procedures for the STIU unit --

3 A. Right.

4 Q. -- and you didn't know?

5 A. Exactly.

6 Q. And today you know down to the fact that
7 it's 88 pages long?

8 A. Exactly.

9 Q. So what happened between yesterday and
10 today that helped you now remember that it's 88
11 pages?

12 A. I looked it up, that it was 88 pages.

13 Q. And how did you do that?

14 A. I have it on my computer.

15 Q. Okay. When we first started this morning,
16 I thought I asked you if you had looked it up, and I
17 thought you said you had some problem --

18 A. You asked me if I looked up policies. And
19 I said that I was not able to get policies on my
20 computer. I have the STIU policies.

21 Q. Okay. So can you tell us -- well, did you
22 bring the 88-page document that is the STIU policy?

23 A. I have it on my cellphone. I mean, I'm not
24 allowed to bring it in here, but I don't have like a
25 printer at home or anything that I could print

1 anything out with. But if you like, I could show it
2 to you on my cellphone.

3 Q. Yeah, or you could forward it to me?

4 A. Sure, I can do that -- well, I'm sorry, I
5 take that back. I cannot forward it to you, because
6 it's a confidential file. The STIU policy is
7 confidential, and so I'd have to get permission from
8 the Secretary of Corrections to forward it to you.

9 Q. Okay. Have you produced that to the
10 Government in connection with your proffered expert
11 opinion?

12 A. I have not.

13 Q. You have not.

14 Let's move to paragraph 7, which talks
15 about how SNM Gang members identify themselves in
16 various things that supposedly represent membership
17 in the SNM. I think you talked about this a little
18 bit yesterday, when Ms. Armijo showed you some
19 photographs of various tattoos and markings. Do you
20 recall that testimony?

21 A. Yes, I do.

22 Q. And, I guess, correct me if I'm wrong, this
23 is one of the areas where you actually have made some
24 personal observations --

25 A. Correct.

1 Q. -- of markings or tattoos or symbols,
2 right?

3 A. As part of my job, yes.

4 Q. I want to go to what I'm labeling paragraph
5 8. And I'm just going to -- paragraph 8 is a summary
6 of the purposes of the SNM enterprise. And I'm going
7 to put it up here. There is a list of A through F
8 that are listed out here in this Document 1299, what
9 the purposes of the SNM enterprise are. Are these
10 opinions that you intend to offer, that you're being
11 asked to offer as a gang expert?

12 A. Yes. I believe that these were opinions,
13 not only found through interviews, but also when the
14 certification was done on the SNM, these were part of
15 the criteria.

16 Q. Okay. When you talk about the
17 certification of the SNM, is this the reference that
18 the Department of Corrections has classified SNM as a
19 Security Threat Group?

20 A. Yes.

21 Q. And I think you told us yesterday that's
22 not something that you did?

23 A. Correct.

24 Q. That's something that happened before you
25 became an STIU officer?

1 A. It's documented, so, yes.

2 Q. And have you read the materials that were
3 put together certifying the SNM as a Security Threat
4 Group?

5 A. Yes, I have.

6 Q. Is there a package or something like that
7 that is in the possession of Department of
8 Corrections?

9 A. Yes.

10 Q. Is that something that has been produced to
11 the Government in connection with your expert
12 testimony in this case?

13 A. I have not produced anything to the
14 Government.

15 Q. Do you know when that -- I think you told
16 us, 2008?

17 A. I believe it was in 1999 -- 2008, what?
18 I'm not sure.

19 Q. When was SNM certified as a Security Threat
20 Group?

21 A. I believe it was in 1999.

22 Q. Okay. And that's the date of this
23 certification package, 1999?

24 A. Correct.

25 Q. So your opinions that you're offering with

1 respect to these categories A through F are based on
2 your personal interviews as a corrections officer, or
3 an STIU officer, with inmates, and your review of
4 that package of materials that was prepared back in
5 1999?

6 A. Correct.

7 Q. Let me go to paragraph 9, which is the
8 means and methods in which people participate in the
9 affairs of SNM. Let me know when you're done with
10 reviewing the first part, and then I'll put up the
11 second part. That also has bullet points A through
12 E. Let me put up the next part. I want to make sure
13 you review them before I ask you the question.

14 A. Okay, ma'am.

15 Q. Have you had a chance to fully review that?

16 A. Yes.

17 Q. And these are opinions that you want to
18 offer as -- or the Government wants you to offer as
19 an expert witness?

20 A. Correct.

21 Q. And are the basis of these opinions similar
22 to the other opinions that you're proposing to offer,
23 your experience as a correctional officer, and your
24 interviews with inmates and other correctional
25 officers?

1 A. Correct.

2 Q. Is there anything else that informs the
3 basis of these opinions?

4 A. Just my time and experience on speaking
5 with these individuals, inmates, correctional
6 officers. But mainly, yes, what you're saying.

7 Q. Okay. I think we're through the six pages,
8 so I'm going to move on to a different area.

9 Yesterday, Ms. Armijo asked you some
10 questions about the type of activities SNM Gang
11 members engage in in prison. And I think you talked
12 about the narcotics activity, taxation, possession of
13 shanks, contraband, protection-type racket. Do you
14 recall that testimony?

15 A. Yes, ma'am.

16 Q. Is that testimony like the other -- is that
17 opinion or those opinions like the other ones that
18 we've just discussed, based on your interviews with
19 inmates and correctional officers?

20 A. Right, and also working in that environment
21 as well.

22 Q. I think you testified yesterday that SNM is
23 known for violence, and that they engage in violent
24 crimes in prison. And that if orders aren't
25 followed, they will violently retaliate against their

1 own members. Do you recall that testimony?

2 A. Yes.

3 Q. What is the basis of that testimony?

4 A. Interviewing inmates that are current
5 members of the SNM and ex-inmates. Also,
6 correctional officers and staff.

7 Q. You testified yesterday about the structure
8 of the SNM, I think, starting from the early 1980s,
9 up through the present?

10 A. Correct.

11 Q. What is the basis of those opinions?

12 A. Those opinions are on individuals that are
13 still active members, but as you noted, are called
14 veteranos, individuals that are really not in the
15 politics of SNM anymore, but they had information on
16 the structure and history of the SNM, as well as
17 outside law enforcement debriefing an individual that
18 was part of the original SNM structure.

19 Q. So that would be you not only interviewing
20 other inmates, but reviewing reports of other law
21 enforcement officers regarding their interviews of
22 other alleged SNM members?

23 A. Yes. And also the debriefing of the
24 individuals that understand the history of the SNM,
25 that corroborates.

1 Q. So the debriefing of inmates who are going
2 into or seeking to get into the RPP Program?

3 A. Yes, individuals that were part of the
4 original SNM structure, as well as individuals that
5 were debriefed and schooled in the history of the
6 SNM.

7 Q. You testified yesterday about infighting
8 within the SNM, among the SNM Gang members, and
9 jealousy and bickering.

10 A. Correct.

11 Q. Is the basis of that opinion similarly
12 interviews of people you and other law enforcement
13 officers have conducted with SNM, and alleged SNM
14 members?

15 A. Correct.

16 Q. That's not based on any sort of personal
17 knowledge?

18 A. I'm not a member of the SNM, no.

19 Q. You testified yesterday about how somebody
20 becomes a member of SNM, when Ms. Armijo asked you
21 the question. What is the basis of that opinion?

22 A. I'm sorry? Can you repeat that?

23 Q. Yeah. Yesterday, you were asked: How does
24 somebody become a member of SNM? And you talked to
25 us about that, how they became a member in the '80s

1 and how they changed over time. Do you recall that
2 testimony?

3 A. Yes.

4 Q. How did you form that opinion?

5 A. Those are individual SNM members that have
6 given that information either through the RDC process
7 or through debriefing, that have stated how they
8 became members or the process of becoming a member.

9 Q. And you also talked about how people might
10 leave the SNM?

11 A. Correct.

12 Q. And is that similarly -- is that opinion
13 based on the same type of interviews?

14 A. Correct.

15 Q. You talked yesterday about the rules: Not
16 snitching, don't leave a brother hanging.

17 A. Um-hum.

18 Q. What is the basis of your knowledge about
19 the, quote, "rules of SNM"?

20 A. The same, interviewing inmates.

21 Q. You testified yesterday that cooperators
22 are people that the SNM thinks should be killed. Do
23 you recall that testimony?

24 A. Yes.

25 Q. And what is the basis of that opinion?

1 A. Interviewing individuals that have left the
2 organization, and also interviewing individuals that
3 are current active members.

4 Q. Anything else besides that?

5 A. No, ma'am.

6 Q. Yesterday you were asked what the motive
7 behind the Javier Molina murder was. Do you recall
8 that question?

9 A. What was the question?

10 Q. What the motive behind the Javier Molina
11 murder was?

12 A. Okay.

13 Q. Do you recall that question?

14 A. Yes.

15 Q. Okay. Were you present at Southern New
16 Mexico Correctional Facility when Mr. Molina was
17 murdered?

18 A. No, I was not.

19 Q. Have you spoken with the people who
20 actually wielded the shanks, Mr. Montoya, Mr.
21 Armenta?

22 A. About the murder?

23 Q. Yes.

24 A. No.

25 Q. So neither one of those people have told

1 you what the, quote, "motive behind the murder was,"
2 have they?

3 A. Correct.

4 Q. Have you spoken with Timothy Martinez or
5 Mario Rodriguez about the homicide of Mr. Molina?

6 A. I have not.

7 Q. So neither one of those individuals told
8 you what the, quote, "motive behind the Molina murder
9 was"; is that right?

10 A. That's correct.

11 Q. And I think what you testified was that the
12 murder was motivated by the fact that he had ratted
13 on somebody. Do you recall that testimony?

14 A. I don't know if I said that was the motive,
15 but I believed that was the purpose.

16 Q. And what forms the basis of that belief?

17 A. The documents that I've read, when they
18 refer to being charged by the state.

19 Q. So like police reports --

20 A. Correct.

21 Q. -- from the New Mexico State Police?

22 A. Just -- I'm trying to remember. The
23 interviews collected by STIU at the time of the
24 murder that happened, interviewing some individuals
25 at PNM regarding the murder, and interviewing other

1 SNM members regarding the murder, which would
2 indicate that it was based on paperwork.

3 Q. Okay. The interviews that you read, do you
4 have a list of the interviews or the documents you're
5 relying on?

6 A. I don't.

7 Q. Based on your recollection of the
8 documents, is it your analysis that the people that
9 were interviewed gave consistent reasons for the
10 murder of Javier Molina?

11 A. I think they were pretty consistent, yes.

12 Q. And so you didn't have to reconcile -- I
13 mean, you didn't have to figure out which statements
14 to accept as credible and which statements to reject
15 as not credible in making this analysis of the
16 motive?

17 A. Based on my experience and knowledge of
18 gangs, I have an understanding that -- through my
19 extensive research -- I mean interviewing of inmates
20 that the SNM is -- if they're going to kill someone,
21 they're going to produce paperwork for it.

22 Q. So --

23 MR. SINDEL: Excuse me? I'm sorry, I
24 didn't hear the last part of the answer.

25 THE COURT: He said that they were going to

1 produce paperwork for it.

2 MR. SINDEL: Okay, thank you.

3 Q. So what you're saying is, it's your belief
4 that, because in the past people were killed because
5 there were paperwork showing they were a cooperator,
6 it's your opinion that the murder of Mr. Molina
7 occurred because there was paperwork showing he was a
8 cooperator?

9 A. Correct.

10 Q. That's the basis of your opinion?

11 A. Correct.

12 Q. You testified yesterday about the murder of
13 Freddie Sanchez. Do you recall that testimony?

14 A. Yes, I do.

15 Q. And what was the basis of all of that
16 testimony? I mean, were you present at the murder of
17 Mr. Sanchez?

18 A. I wasn't present when they killed him, no.

19 Q. And was your rendition of how that homicide
20 happened based on your review of police reports and
21 other paperwork?

22 A. I interviewed him two days before he was
23 murdered.

24 Q. And he told you he was in danger of being
25 killed by the SNM?

1 A. They had paperwork on him.

2 Q. Did you recommend that he be moved?

3 A. Correct.

4 Q. And was he moved?

5 A. No.

6 Q. Was the interview with the homicide victim
7 the only thing that you based your opinions on with
8 respect to that crime?

9 A. Primarily, yes. I didn't think he had any
10 reason to lie that he knew they had paperwork on him.
11 He stated also that they told him that they had
12 paperwork on him. And he knew there was paperwork on
13 him.

14 Q. I'm not really asking you what he said.
15 I'm asking you if there is anything else besides what
16 he told you before he was killed?

17 A. I'm explaining what the basis of my
18 understanding is --

19 Q. I just want to go back.

20 A. -- or my opinion.

21 Q. All right. I just want to make sure that
22 I'm clear about it. Is there anything else that
23 you're relying on besides Mr. Sanchez' statements
24 before he was killed?

25 A. No.

1 Q. We touched on this earlier, but I'm not
2 sure I covered it thoroughly, so I just want to go
3 back. You testified yesterday about the ways of
4 communication between people in SNM. And I think you
5 talked about sign language, kites, conversing out in
6 the recreation cages, ways that telephones can be
7 used to communicate between members. Do you recall
8 that testimony?

9 A. Yes, ma'am.

10 Q. Would you agree with me that that's how
11 prison inmates, in general, communicate, not just
12 members of Security Threat Groups or disruptive
13 groups?

14 A. Absolutely.

15 Q. It's the ingenious ways people think up to
16 communicate with each other when they are -- their
17 communications are restricted?

18 A. Correct. Or when they don't want you to
19 hear their communication. It's subversion kind of.
20 It's a subversion.

21 Q. We talked about -- we went through the
22 Document 1299, the expert notice about SNM activities
23 in the street. And I just want to follow-up on
24 something you said yesterday.

25 A. Okay.

1 Q. Yesterday you testified that an inmate that
2 was released from prison that was a member of SNM
3 was, quote, "obligated to meet up with the guy who is
4 in charge on the street and to come up with criminal
5 business to send drugs and money back to prison." Do
6 you recall that testimony?

7 A. Yes, I do.

8 Q. What is the basis of your opinion that
9 inmates that are released are obligated to meet up
10 with the person in charge and then engage in criminal
11 activity?

12 A. Interviewing inmates that have gone out to
13 the streets and have returned back to prison. Also
14 on individuals that have debriefed.

15 Q. And I just -- I guess I want to follow up
16 on this a little bit. So it's the circumstance where
17 somebody has been released from prison, gone back to
18 criminal activity, and then ends up back in prison,
19 and you're talking to him?

20 A. Yes, when they return back, and if they're
21 in my area of contact, yes.

22 Q. Okay. And in certain instances, these
23 individuals have told you that they were actually
24 forced or were obligated to engage in further
25 criminal activity because of the gang?

1 A. Yes, that's part of the rules.

2 Q. And my question to you is: In evaluating
3 those statements, do you ever consider that that's a
4 way that an individual might seek to lessen his own
5 personal responsibility for his continued criminal
6 activity?

7 A. Well, it's none of my concern on that deal,
8 because if he's still going back to the unit, he's
9 just giving me information.

10 Q. Okay. But my question is: Do you consider
11 that potential motivation in evaluating the
12 credibility of that information?

13 A. I just didn't see any reason for them to
14 lie about it, I guess. Because I'm not offering
15 anything, and they're not getting anything.

16 Q. Well -- but I'm giving you a reason they
17 might have to lie: To save face, to make it look
18 like they didn't just go out and commit crimes on
19 their own after they just got out of prison, but that
20 they were somehow forced to do so?

21 A. Well, you know, that would be something
22 more or less that they would tell their fellow
23 inmates, not me. I mean, for them to tell me that,
24 it gains them absolutely nothing.

25 Q. So you don't consider that in evaluating

1 the credibility of those inmates?

2 A. I consider all things. But what you're
3 asking is probably -- the probability is pretty low.

4 Q. And how do you evaluate the probability
5 that that might or might not happen?

6 A. Just time and experience of knowing inmates
7 and knowing how gangs operate.

8 Q. Have you conducted any studies on that?

9 A. No, ma'am. Just a lot of experience in the
10 time that I've worked in prison.

11 Q. You testified yesterday that if an SNM Gang
12 member saw a rival in prison, that it was mandatory
13 that they assault that person?

14 A. Correct.

15 Q. And what is that based on, that opinion?

16 A. Well, it's on the interviews that I've had
17 with individuals that have either assaulted someone,
18 or that has been assaulted, either way; individuals
19 that have debriefed, and current members of gangs.
20 You know, it's part of their creed.

21 Q. So interviews with people who are now
22 facing you after they've either been apprehended for
23 an assault or the victim of an assault?

24 A. Within the prison, yes.

25 Q. You testified yesterday, I believe, about

1 some sort of murders that were committed by Frederico
2 Munoz?

3 A. Correct.

4 Q. What was the basis of your expert opinion
5 on that topic, or those topics?

6 A. Interviews with Frederico Munoz and other
7 members of the SNM.

8 Q. So I want to move to a little bit of a
9 different topic. In preparation for your testimony
10 today, or your testimony as an expert witness in this
11 case, have you reviewed the STIU file regarding
12 Daniel Sanchez, and whether or not he's a validated
13 member of the SNM?

14 A. I think it's been a while since I reviewed
15 his. But I think he's still under suspect. But I
16 couldn't tell you for sure.

17 Q. Okay. You don't know, as you sit here
18 today, whether or not he's a validated member of the
19 SNM?

20 A. I couldn't honestly tell you. Again, this
21 was, like, last minute for me to come up here, so I
22 didn't know -- I would have looked up all that
23 information. But honestly don't know. I believe
24 he's still a suspected member.

25 Q. Okay. And I want to -- so you haven't

1 recently reviewed his STIU file?

2 A. No.

3 Q. Okay. In evaluating whether somebody is a
4 validated member of SNM, is one of the things that
5 the STIU officers are instructed to look for is
6 whether an inmate possesses some sort of leadership
7 capability?

8 A. Correct.

9 Q. And can you explain the rationale behind
10 that, if you know what it is? Why would leadership
11 lead towards someone being a validated gang member?

12 A. Well, because if he's a leader of the gang,
13 he -- if he's not all the way in, ain't nobody going
14 to pay attention to him.

15 So the way we do things is, you know, we've
16 got to find documentation that relates to factually
17 saying -- I mean, I know that he's a member of the
18 SNM; I have to prove that he's a member of the SNM.
19 So I have to have documentation that corroborates the
20 fact that he is an SNM member.

21 Q. So I guess my question to you is: What
22 type of information or documentation would you need
23 to give somebody these leadership points or to say
24 that somebody is a leader, that could lead towards
25 their gang validation?

1 A. I guess confidential information would be
2 one. Documentation where it states that he's a
3 leader.

4 Q. Let me stop you. When you say
5 "confidential information," is the kind of
6 documentation you're referring to, that means like a
7 report of an informant, who doesn't want his name to
8 be known, saying, you know, Amy Jacks is a leader of
9 the SNM? Is that what you're talking about?

10 A. Honestly, I'm sure I'm lost as to this
11 whole question, what you're asking.

12 Q. Well, let me --

13 A. If you're asking me if being a leader is
14 the criteria for validation, I'm not sure that that's
15 the criteria for validation.

16 Q. Okay. Well, that's fair.

17 Let me just ask you specifically: Do you
18 think it's relevant, with respect to the New Mexico
19 Department of Corrections' validation of somebody as
20 a gang member, that they point out that a particular
21 gang member -- a particular individual is known to
22 have the ability to organize inmates to a specific
23 purpose? For example, organizing a pod-wide informal
24 complaint project concerning the heating and
25 ventilation of a housing unit?

1 A. Your question is what?

2 Q. Is that something that's a relevant fact
3 towards determining whether somebody is a validated
4 gang member?

5 A. No.

6 Q. And do you think that the fact that
7 somebody was successful in addressing the temperature
8 of the inmates' food when served is a relevant fact
9 in determining whether somebody is a validated gang
10 member?

11 A. No.

12 Q. Are you aware of documents prepared -- do
13 you know who Hope Salazar is?

14 A. Yes.

15 Q. And do you know who Gabriel Salazar is?

16 A. Yes.

17 Q. Are you aware of communications between
18 Gabriel Salazar and Hope Salazar regarding Mr.
19 Sanchez that's contained in his gang validation file
20 to that effect, that he successfully organized a
21 complaint about heating and ventilation in his
22 housing unit, and was successful in addressing the
23 temperature of the inmates' food when served?

24 A. I'm not aware of that. It's been a long
25 time since I read his file. I've known Daniel. He's

1 never really been in the same place as I have, so
2 I've known -- very limited knowledge of Mr. Sanchez.

3 Q. But my question is, if something like that
4 is in Mr. Sanchez' STIU file, is that relevant at all
5 to whether Mr. Sanchez is or isn't a member of a
6 Security Threat Group?

7 A. Unless there is more written into that, no.

8 Q. And I want to follow up on one more thing
9 that you said yesterday, regarding the tattoos that
10 you've seen validated SNM members have.

11 A. Correct.

12 Q. Okay. And I think one of the pictures you
13 were shown showed the Zia symbol with an "S" inside
14 of it?

15 A. Correct.

16 Q. And you said that was a tattoo that you
17 recognized as a tattoo that only validated SNM
18 members have?

19 A. Not only validated members, no.

20 Q. Okay. I'm sorry, then I misunderstood.

21 A. It's part of a validation process.

22 Q. Okay. But is somebody who -- let me go
23 back, because I think I didn't ask the question a
24 good way.

25 You were asked a question about the Zia

1 symbol without the "S" inside.

2 A. Correct.

3 Q. And can you remind me what you said about
4 that?

5 A. Yeah, the Zia symbol in itself doesn't mean
6 other than the Zia symbol.

7 Q. The Zia symbol is a symbol that the State
8 of New Mexico uses all over the place, right?

9 A. Correct.

10 Q. And the fact that somebody has a Zia symbol
11 would not indicate that they were a member or
12 claiming membership in SNM?

13 A. Not in my opinion, no.

14 Q. And if you saw somebody with a Zia symbol
15 with the S inside -- I'm going to ask this a
16 different way, so let me go back.

17 Have you ever seen somebody who is not a
18 member of SNM, or who you believe not to be a member
19 of SNM, have a Zia symbol with the S inside tattooed
20 on them?

21 A. No.

22 MS. JACKS: I have nothing further at this
23 time.

24 THE COURT: All right. Thank you,
25 Ms. Jacks.

1 Any other defendants want to cross-examine?

2 Ms. Duncan?

3 MR. SINDEL: Your Honor, if I may.

4 THE COURT: Let's see, I think Ms. Duncan
5 got up first. So I'll let you go next, Mr. Sindel.

6 MR. SINDEL: Ladies first?

7 THE COURT: Well, I'm not going to go
8 there. I'm just saying.

9 EXAMINATION

10 BY MS. DUNCAN:

11 Q. Good morning, Mr. Martin.

12 A. Good morning.

13 Q. I would like to ask you -- I'm a little
14 confused about the prior cases in which you
15 testified, so I'd like to ask you about those.

16 A. Sure.

17 Q. So I believe you testified you testified,
18 or that you've testified in two prior cases; is that
19 correct?

20 A. As a witness, yes.

21 Q. And one was about a person who was a member
22 of the Surenos Gang; correct?

23 A. Correct.

24 Q. And then the other about a person you
25 considered to be a member of the SNM Gang; is that

1 correct?

2 A. Correct.

3 Q. And in neither of those cases did you
4 testify as an expert witness; correct?

5 A. I testified as to gang knowledge. The
6 whole reason I was there is to testify on behalf of
7 my gang knowledge.

8 Q. In which case are you talking about?

9 A. Both.

10 Q. Well, in the case -- the case about the
11 Surenos, that was Gonzalez versus Joey; correct?

12 A. Correct.

13 Q. And you recall you testified about a
14 person, Mr. Gonzalez, who was an admitted member of
15 the California Surenos; correct?

16 A. Correct.

17 Q. And about disputes he had with members of
18 the New Mexico Surenos; correct?

19 A. No, it was a religious right, so it was a
20 civil suit.

21 Q. Sure. And Mr. Gonzalez wanted to
22 participate in sweat lodges; correct?

23 A. Correct.

24 Q. And the Department of Corrections was
25 denying him that in part because he was a Sureno?

1 A. Because his -- he was claiming religious
2 rights, indigenous michika (phonetic) religious
3 rights that he claimed required him to go to a sweat
4 lodge.

5 Q. Correct. And the Department of Corrections
6 was denying him that right because of security
7 concerns; correct?

8 A. Correct.

9 Q. And that was because he had been identified
10 as a Sureno?

11 A. Correct.

12 Q. So you were called by Mr. Gonzalez'
13 attorney to testify about interviews you had
14 conducted with New Mexico Surenos members; correct?

15 A. I was deposed by his attorney. I wasn't
16 called as a witness. I was a witness for the State.

17 Q. The first person who questioned you at that
18 trial was an attorney named Matthew Garcia; correct?

19 A. Correct.

20 Q. And Mr. Garcia is a civil rights attorney
21 who represented Mr. Gonzalez?

22 A. Correct.

23 Q. So during that testimony, Mr. Garcia asked
24 you about interviews you had done with the New Mexico
25 Surenos; correct?

1 A. I'm not sure, ma'am.

2 Q. So do you recall testifying about a hit
3 list that you found that identified Mr. Gonzalez as a
4 subject of a hit?

5 A. Yes, ma'am.

6 Q. And testifying about disputes between Mr.
7 Gonzalez, as a California Sureno, and the New Mexico
8 Surenos, because Mr. Gonzalez believed the California
9 Surenos were the real deal?

10 A. I think so. I'm not sure.

11 Q. And do you recall during that -- when you
12 were being questioned, that at some point the
13 attorneys objected that you had not been qualified as
14 an expert?

15 A. I didn't attend as an expert, no.

16 Q. And you did not attend as an expert in the
17 case involving the SNM; is that correct?

18 A. Correct.

19 Q. So I'd like to show you Document No. 1299?

20 A. Sure.

21 Q. I'm on page 7. If you look here at the
22 bottom of the page, it's discussing your credentials
23 as a potential expert in this case; correct?

24 A. Correct.

25 Q. And if you turn to page 7, what I've

1 highlighted, it reads that "Sergeant Martin was
2 qualified as a gang expert and provided testimony
3 concerning the California Sureno Gang culture and
4 ideology." Did I read that correctly?

5 A. Correct.

6 Q. But that's not true?

7 A. No. I believe that I was the -- one of the
8 main guys that certified, that did the certification
9 on the California Surenos. Yeah, that's not correct.
10 I did not testify as a gang expert, just as my
11 knowledge on the California Surenos, since I had
12 certified them. I had provided all the information
13 and I conducted all the -- I had conducted the
14 investigation into the California Surenos, and
15 compiling everything to get them certified as a
16 Security Threat Group. And that was my expertise
17 within that group.

18 Q. When you testified for Mr. Gonzalez, you
19 were testifying about how you certified the
20 California Surenos, given that Gonzalez self-admitted
21 to being a member of the California Surenos; correct?

22 A. Correct.

23 Q. And so have you discussed -- since you left
24 court yesterday, and before taking the stand again
25 this morning, have you discussed your testimony with

1 anyone?

2 A. No.

3 Q. And can you tell me how did you come -- how
4 did it happen that the United States identified you
5 as a potential gang expert in this case?

6 A. I was working with Mr. Acee on the
7 California Sureños before the SNM, so I had knowledge
8 of him. And he worked with some of the individuals
9 in STIU on the SNM case. And so I've also been
10 involved a little bit in helping him with that. But
11 not too much. Not directly. Indirectly, I guess.

12 Q. So what do you mean? Can you explain more,
13 what do you mean that you've been involved in helping
14 Mr. Acee?

15 A. For example, if he calls me and asks me who
16 this guy is or that guy is, I'll look it up and
17 advise him who it is, what's going on.

18 Q. Have you provided any documents to Mr.
19 Acee?

20 A. Only what he's requested, if any he's
21 requested.

22 Q. What has Mr. Acee requested from you?

23 A. A couple years, just fliers; maybe looking
24 up documentation on where an individual lives, stuff
25 like that. Mainly, I really haven't -- like I said,

1 I really haven't been directly involved in collecting
2 documentation.

3 Q. And how would you convey those documents to
4 Mr. Acee?

5 A. By scanning email to him.

6 Q. Would those emails still be on your
7 computer?

8 A. I doubt it. I erase all that stuff.

9 Q. You erase all your emails?

10 A. I have to. I'll run out of storage room.

11 Q. Do you have -- is there a system by which
12 your emails are backed up regularly?

13 A. Yes.

14 Q. How often are your emails backed up?

15 A. I get a lot of email, so I probably get rid
16 of them once a week.

17 Q. And are you currently an employee of the
18 State of New Mexico?

19 A. Yes.

20 Q. And are you aware of the record retention
21 policies for the State of New Mexico?

22 A. Yes.

23 Q. And do you comply with those policies?

24 A. I would say yes, I guess.

25 Q. I'd like to ask you about Government's

1 Exhibit 18, which was the STIU file of Mr. Baca.

2 A. Sure.

3 Q. I'm going to put it on the Elmo so we all
4 know what we're talking about. Yesterday you
5 testified about the different categories used to
6 validate a suspected gang member; correct?

7 A. Correct.

8 Q. And here we see the box is checked for
9 self-admission, tattoos, symbolism, documents, and
10 contacts; correct?

11 A. Correct.

12 Q. Now, in Mr. Baca's STIU file for
13 self-admissions those alleged admissions were made to
14 people other than you; correct?

15 A. I'm sorry, I don't understand the question.

16 Q. Sure. It was badly worded.

17 The admissions on which the Department of
18 Corrections relied to validate Mr. Baca were made to
19 people other than you; correct?

20 A. Yes. I never interviewed him for
21 validation purposes.

22 Q. And then the section entitled "documents,"
23 I'm looking, Counsel, starting at page 11316.

24 THE COURT: Ms. Duncan, I'm wondering, if
25 we're shifting gears, would this be a good time for

1 us to take a break?

2 MS. DUNCAN: It would, Your Honor.

3 THE COURT: All right. Let's take our
4 morning break. We'll be in recess about 15 minutes.

5 (The Court stood in recess.)

6 THE COURT: It's a busy courthouse. We've
7 got defendants in other rooms. So I know there is
8 limitation on the restrooms. So I appreciate
9 everybody working trying to get back in here quickly.
10 I think we've got all counsel. Everybody got
11 counsel?

12 All right. Mr. Martin, I'll remind you
13 you're still under oath.

14 THE WITNESS: Yes, sir.

15 THE COURT: Ms. Duncan, if you wish to
16 continue your cross-examination of Mr. Martin, you
17 may do so at this time.

18 MS. DUNCAN: Thank you, Your Honor.

19 THE COURT: Ms. Duncan.

20 BY MS. DUNCAN:

21 Q. So I think when we had the break we were
22 talking about documents that were included in the
23 STIU file. And am I correct that you did not collect
24 any of those documents?

25 A. On Anthony Ray Baca, no.

1 Q. And I wanted to ask you about a hit list.
2 Let me find it here. And I'm looking at Bates No.
3 11330. And it talks about three documents that were
4 found in the STG soft file of inmate Anthony Baca.
5 Can you tell me what is an STG soft file?

6 A. It would be a file that we -- for example,
7 it's probably not put in his gang file, but would be
8 a file that's kept on Mr. Baca.

9 Q. And where would that file be kept?

10 A. Depending on who the STIU officer was
11 working on it, but mostly, it would be kept in the
12 coordinator's office. I believe he keeps all those.

13 Q. So the soft file is also an STIU file, but
14 it's not the official file?

15 A. Yeah. And I'm not sure if they're talking
16 about his case file.

17 Q. Would it help if I show you the document?

18 A. Yeah.

19 Q. And again, this is 11330.

20 MS. DUNCAN: May I approach, Your Honor?

21 THE COURT: You may.

22 A. I take it to mean it would be a file
23 someone has on him. So probably the coordinator
24 would have the soft file on him.

25 Q. Do you know -- so that report documents

1 three -- the review of three documents that were
2 found in the soft file; correct?

3 A. As far as I understand it.

4 Q. Do you know when those documents were
5 placed in the soft file?

6 A. I do not.

7 Q. Do you know who placed them in the soft
8 file?

9 A. I do not.

10 Q. Do you know where the documents came from,
11 other than the soft file?

12 A. No.

13 Q. Or who wrote those documents?

14 A. I do not.

15 Q. The next criteria on the list were
16 contacts. And this is at Bates No. 11334. And the
17 contact file contains letters to and from people
18 other than Mr. Baca; correct?

19 A. Correct.

20 Q. And is that normal for an STIU file to
21 contain communications that aren't from the inmate,
22 to or from the inmate at issue?

23 A. To be put in his file, is that what you're
24 suggesting?

25 Q. Yes.

1 A. Well, if they're trying to build an
2 association between a known, validated member and a
3 suspected member, that would be something that we
4 would be put in there for basis of either suspecting
5 that individual or to build documentation to say that
6 that person is a member of that group.

7 The other part is that within that -- the
8 context of that document, if there is what we believe
9 to be gang business being discussed, that's evidence
10 that that individual is talking business between
11 gangs.

12 Q. Am I correct that it's common to find
13 documents that are neither authored by or received by
14 a particular person in their STIU file?

15 A. Let's see if I can get your question
16 correctly. Are you asking me that it's common for us
17 to put letters that don't relate to that inmate, or
18 that he didn't author or receive?

19 Q. So -- yes. So letters -- let's say is it
20 common to find in the STIU file letters that were not
21 authored by the inmate whose file it is?

22 A. But were written to him?

23 Q. Or just that he didn't write, let's ask
24 that first question.

25 A. Yeah. I mean, yes, if it's written to, it

1 could be.

2 Q. So the second part, is it common to find
3 letters that are written from someone other than that
4 person to a third person? So, for example, if we're
5 talking about Mr. Baca, so a letter that's neither
6 written by Mr. Baca, nor written to Mr. Baca?

7 A. If his name is mentioned in it, it could be
8 common that they would place it in there, yes.

9 Q. And the letters that we find in Mr. Baca's
10 file, they include some analysis by STIU staff;
11 correct?

12 A. Correct.

13 Q. And that analysis was not conducted by you;
14 correct?

15 A. Correct.

16 Q. In the document -- going back to the
17 criteria for Mr. Baca. In contacts it has letters
18 from Joe Barros, and then it's cut off, too. Would
19 you expect to see the documents that STIU relies on
20 to designate a particular inmate in this STIU file?

21 A. I'm not sure I understand the question.

22 Q. I'm not asking good questions. This
23 references a letter or letters from Joe Barros;
24 correct?

25 A. Correct.

1 Q. Would you expect to see the letters from
2 Joe Barros in this file?

3 A. Yes.

4 Q. And I'm going to hand you this exhibit and
5 ask you to let me know if you see any letters from
6 Joe Barros in this file?

7 A. I can't say that I see a letter from Joe
8 Barros in there, no.

9 MS. DUNCAN: Okay. I'm just going to
10 retrieve the file, Your Honor.

11 A. Sure, ma'am.

12 Q. Let me ask you a quick question. This is
13 Government's Exhibit 23 that you testified to on
14 direct. Can you tell me whose handwriting is on this
15 document?

16 A. I can't tell you whose it is, no.

17 Q. You also testified on direct about Mr. Baca
18 being transferred from Southern New Mexico
19 Correctional Facility to PNM based on CI information
20 that there were threats on his life; correct?

21 A. Correct.

22 Q. And I think the first time that you
23 testified that that occurred was in 2011?

24 A. I believe it was about 2011.

25 Q. And was that based exclusively on CI

1 information?

2 A. It was -- I'm not sure how that information
3 was gathered; whether it was -- well, my guess is it
4 was CI information. It was relayed to us that Mr.
5 Baca's life may be in danger, and that the
6 administration had made a decision to move him back
7 to the penitentiary.

8 Q. Were you involved in that investigation?

9 A. I wasn't involved. My only involvement was
10 to interview Mr. Baca.

11 Q. Were you part -- were you involved in the
12 decision to move him from Southern to PNM?

13 A. I was not.

14 Q. Do you know the identity of the informant
15 who provided the information that there was a hit
16 against him?

17 A. I do not, ma'am.

18 Q. And I want to ask you the same questions
19 about the alleged threat against his life in 2013.
20 Were you involved in the investigation of that
21 threat?

22 A. No, I was not, ma'am.

23 Q. Were you involved in the decision to move
24 Mr. Baca from Southern to PNM Level 6?

25 A. I was not.

1 Q. Are you aware of how that decision was
2 made?

3 A. I believe that came from the STIU
4 department at Southern, and the STIU administration
5 made that decision or the Director of Adult Prisons.

6 Q. Were you involved in Mr. Baca's appeal of
7 that decision?

8 A. I was not.

9 Q. Now, are you aware that, in 2014, Mr. Baca,
10 Daniel Sanchez, and Mauricio Varela were sent out of
11 state?

12 A. Yes, I'm aware of that.

13 Q. And are you aware that before they were
14 sent out of state, then Secretary Marcantel spoke
15 with Mr. Baca, Mr. Sanchez, and Mr. Varela?

16 A. I'm aware that happened.

17 Q. Were you present during that meeting?

18 A. No, I was not.

19 Q. Were you present -- are you aware that
20 there was also a meeting with alleged SNM members
21 about the transfer of the three men?

22 A. A meeting with -- between Mr. Marcantel and
23 the inmates?

24 Q. Yes.

25 A. I think I'm aware of that, but I wasn't

1 present during that time.

2 Q. When you interviewed alleged SNM members in
3 the course of your duties, did you ever record those
4 interviews?

5 A. No.

6 MS. DUNCAN: Your Honor, if I could just
7 have a moment?

8 THE COURT: You may.

9 MS. DUNCAN: No further questions, Your
10 Honor.

11 THE COURT: Thank you, Ms. Duncan.

12 Mr. Sindel, do you have cross-examination
13 of Mr. Martin?

14 MR. SINDEL: Thank you, Your Honor.

15 EXAMINATION

16 BY MR. SINDEL:

17 Q. Good afternoon.

18 A. Good afternoon, sir.

19 Q. We're almost there.

20 A. Correct.

21 Q. You can hardly hope.

22 Did you -- you referred to, when answering
23 the questions from Ms. Jacks about having reviewed
24 the policy and procedure manual that was 88 pages
25 long last night; correct?

1 A. I looked it over.

2 Q. You looked over it. I mean, did you look
3 over it from a distance or did you actually read it?

4 A. No, it's -- I was specifically looking for
5 if it says -- I was looking for the first part of her
6 question, which was the difference between a Security
7 Threat Group and a disruptive group. I know I have
8 it in my PowerPoints, because I show it. But it's
9 just old in memory sometimes, as far as that in
10 particular. I read it off my PowerPoint most of the
11 time.

12 Q. Is the manual arranged by chapters?

13 A. Yes.

14 Q. And so that there is -- you know, a subject
15 matter is covered by a particular chapter; correct?

16 A. Correct.

17 Q. And that the chapters are then subdivided
18 amongst the issues that are covered in that chapter,
19 right?

20 A. Correct.

21 Q. And when she asked you to identify them,
22 you couldn't identify the chapters, right?

23 A. Yeah, it's not something I look at all the
24 time, yes.

25 Q. Is it true that you could not identify the

1 chapter?

2 A. Correct.

3 Q. Okay. And you say you don't look at it all
4 the time. Is this something that's important for you
5 to understand and know what's in the policy and
6 procedure manuals for the prison?

7 A. Right. If it applies to what I'm doing,
8 and I have a question about it, I'll look at the
9 policy, yes.

10 Q. Doesn't certification and the rules and
11 regulations that determine how to certify and how to
12 validate someone as a member of an STG, isn't that
13 something that you do all the time?

14 A. No, it's not.

15 Q. And is it something that you do -- do you
16 frequently have to determine whether or not a
17 particular group is an STG or a disruptive group?

18 A. I already know that.

19 Q. You already know that?

20 A. Yes.

21 Q. From the policies?

22 A. It's already documented that they are.

23 Q. Okay. So do you ever make that
24 determination yourself, or is there someone else who
25 is charged with doing that?

1 A. Yeah, usually the coordinator, the STIU
2 coordinate does that.

3 Q. The coordinator makes those decisions?

4 A. Correct.

5 Q. Although you were listed in Document 1299,
6 which you reviewed yesterday, as the coordinator, you
7 are not?

8 A. Correct, sir.

9 Q. Now, besides counting the pages upon the
10 policy and procedure manual last night, did you
11 review any other documents before coming here today?

12 A. No.

13 Q. Did you review any other documents before
14 testifying yesterday?

15 A. No. Like I said, it was a surprise to me.
16 I got a call on Monday to show up.

17 Q. You got a call on Monday, and then you came
18 in.

19 Now, you were sort of sitting here, you
20 know, all day Monday, or most of it, right?

21 A. Yeah. I'm not allowed to have any -- my
22 phone in here, so I wouldn't have been able to review
23 anything.

24 Q. Well, you were sitting out in the hallway.
25 Are you allowed to have your phone there?

1 A. No.

2 Q. Who told you you couldn't have a phone here
3 in the courthouse?

4 A. The people when I checked in the front said
5 I wasn't allowed to bring in a cellphone.

6 Q. So that was security downstairs?

7 A. Correct, sir.

8 Q. And at any time did you go to retrieve your
9 phone so could you look at these items?

10 A. No.

11 Q. Now, did you request from anyone on the
12 Government's team for access to any of these
13 documents that you were being asked about yesterday?

14 A. No.

15 Q. Okay. When you said you had the 88-page
16 manual that you could look over, did you -- and you
17 said you couldn't print it; is that right?

18 A. Yes, sir. I have a laptop at home, but I
19 have no -- I don't have a printer, so I couldn't
20 print out any of the stuff.

21 Q. Did you make any attempt to contact members
22 of the Government's team of prosecutors to see if
23 they could assist you in printing these documents, so
24 you could comply with Ms. Jacks' request?

25 A. I did not.

1 Q. And did you make any request of members of
2 the prosecution team for any assistance in providing,
3 for example, the written information you gave them so
4 that they could compile their 1299, six-page summary?

5 A. I'm sorry, I don't understand the question.

6 Q. You said yesterday that, and again today,
7 that you had provided them with a written document
8 that basically parroted what was in that Document
9 1299. You know what I'm talking about?

10 A. Correct.

11 Q. That six pages, right?

12 A. Did I ask them for a copy of it?

13 Q. Yes.

14 A. No.

15 Q. Did you make any attempt to try and secure
16 a copy of it?

17 A. I thought I had it on my laptop, but I
18 didn't. So I did make an attempt, yes.

19 Q. All right. So it is something you provided
20 to the prosecution, but it is not something that you
21 made any further attempt after being questioned by
22 Ms. Jacks about it?

23 A. It's probably in my work computer, which I
24 have no access to at this point.

25 Q. I know you don't have access to it now.

1 A. I didn't have access to it last night as
2 well.

3 Q. Does anyone there at the institution have
4 access to your work computer besides you?

5 A. No, sir. I'm -- based on the height of the
6 building, and it's a secure building, no one else
7 would have access to.

8 Q. Now, you had also submitted Government's
9 Exhibit 17, which is the CV that you have referred
10 to; is that right?

11 A. Correct, sir.

12 MR. SINDEL: Your Honor, does the Court use
13 alphabetical for defendants' exhibits?

14 THE COURT: I do. It may be that if we're
15 going to do these, you might want to put your
16 client's name right across the top and then each -- I
17 don't know, let's talk about that. How do we want to
18 run exhibits? Ms. Wild, do you have an opinion?

19 THE CLERK: I guess I do. I think we need
20 to know the defendant that is proffering it. So
21 somehow that defendant's names needs to be associated
22 with the letter or the number.

23 THE COURT: So should each defendant just
24 start with A?

25 THE CLERK: Well, what if we did this:

1 What if we had -- it's more complicated than that.
2 For purposes of this hearing, that's fine, as long as
3 the defendant's first and last name precede the
4 letter.

5 THE COURT: All right. So let's do it that
6 way for the hearing. And I'll give some thoughts as
7 to how we're going to do it at trial. But if
8 everybody starts with A, if you introduce an exhibit;
9 then put your client's first and last name on it.

10 MR. SINDEL: May I approach the witness?

11 THE COURT: You may.

12 Q. I'm going to show you what's been marked
13 for identification purposes as Defendant Joe Gallegos
14 Exhibit A. Do you recognize that? Is there a
15 statement at the top of that exhibit, as to what it
16 is?

17 A. I don't -- yeah, I'm not -- this is Captain
18 Sergio Sapien's. Are you asking me if I know what
19 this is?

20 Q. Is it indicated it's a curriculum vitae?

21 A. Correct.

22 Q. For Mr. Sapien?

23 A. Yes, it does. I wasn't sure what your
24 question was. I'm sorry.

25 Q. I'm sorry. No, no, my fault.

1 Now, you said yesterday that you had
2 authored your curriculum vitae, right, you had
3 written it?

4 A. Yes, sir.

5 Q. And so when you're talking about what
6 appears in that, for example, the FBI Task Force,
7 that's you?

8 A. Yes, sir.

9 Q. And you wrote that?

10 A. Yes, sir.

11 Q. All right. And it says there that you
12 assist the FBI in serving subpoenas?

13 A. I've gone along with them when they've done
14 this, yes.

15 Q. So you haven't actually served them, you
16 just sort of hung out with them while they served
17 them?

18 A. Assist, yeah.

19 Q. Have you served any subpoenas in connection
20 with this investigation?

21 A. Personally, no.

22 Q. Have you assisted them in serving any
23 subpoenas?

24 A. I've gone with them when they've served
25 them.

1 Q. I'm sorry, what?

2 A. I've gone with them when they served them.

3 Q. It says you assist with the service of
4 search and arrest warrants, right?

5 A. Correct.

6 Q. How many searches have you conducted since
7 you've become indoctrinated in the FBI Task Force?

8 A. I can't really say. Maybe four or five,
9 maybe, on the streets.

10 Q. On the streets?

11 A. Yes.

12 Q. So you've gone out on the streets with the
13 FBI, and actually participated in search warrants and
14 the execution of search warrants?

15 A. Correct.

16 Q. And it says that you also conduct
17 surveillance. Is that electronic surveillance?

18 A. I've taken pictures of exchanges, of
19 criminal exchanges and stuff like that. But yes,
20 I've assisted law enforcement, or the FBI Task Force
21 in that, in surveillance, yes.

22 Q. So that you would be basically somewhere
23 where you saw some activity going on, and you had
24 preserved it for the FBI by means of photographs,
25 right?

1 A. In assistance, yes.

2 Q. Is there anything that you've done in terms
3 of surveillance in connection with this case, this
4 investigation?

5 A. No.

6 Q. Are there any search warrants that you've
7 executed in connection with this case?

8 A. In this case? There may be, I'm not sure.

9 Q. Well, do you remember arresting someone
10 with the FBI in connection with this investigation?

11 A. No.

12 Q. It wouldn't be something you would likely
13 forget, is it?

14 A. Correct. That's why I'm saying -- oh, I'm
15 sorry, I did assist them in arresting Brandy, yes.

16 Q. And who was that again? I'm sorry, I just
17 didn't understand.

18 A. Ms. Brandy.

19 THE COURT: I think Ms. Gutierrez.

20 A. Ms. Gutierrez, I'm sorry.

21 Q. And, obviously, we know that you conduct
22 interviews and interrogation, because primarily, your
23 expertise is based on it, isn't it?

24 A. Correct, sir.

25 Q. Now, you saw today -- I gave you a copy of

1 Defendant's Exhibit A, Joe Gallegos A, which was the
2 curriculum vitae for Sergio Sapien.

3 A. Correct.

4 Q. Did you work with him in trying to compose
5 these -- well, I call them CVs, that's what we call
6 them. Did you work with him in terms of composing
7 these?

8 A. No. He showed me his, and he showed me the
9 structure that he used to do it, and I kind of used
10 that pattern, the same pattern.

11 Q. Did you use the same words?

12 A. Of course not.

13 Q. So your words were your words, and his
14 words --

15 A. Well, there might be some similar words,
16 but I'm not saying that -- if you're asking me if I
17 copied his, no.

18 Q. All right. See there number 2?

19 A. Yes, sir.

20 Q. All right. And that's Defendant Joe
21 Gallegos Exhibit A.

22 MS. ARMIJO: Your Honor, for the record,
23 since we have two documents up there, can we make a
24 clear record, and at least, if he's going to be
25 offering these into evidence, move them into

1 evidence, and then also can you refer to which items
2 he has?

3 MR. SINDEL: I would move the introduction
4 into evidence of Defendant Joe Gallegos Exhibit A.

5 THE COURT: Is it A and B? Is it two or
6 one?

7 MR. SINDEL: I've only talked to him about
8 one exhibit.

9 THE COURT: All right. Any objection?

10 MS. ARMIJO: No objection, Your Honor.

11 THE COURT: Any objection from the
12 defendants? Defendant's Exhibit A will be identified
13 in evidence. That's Joe Lawrence Gallegos'.

14 Q. Just for clarification, this document
15 here --

16 THE COURT: And just for clarification,
17 when you said "Brandy," did you mean Ms. Rodriguez or
18 did you mean Ms. Gutierrez, Shauna, over here?

19 THE WITNESS: Ms. Gutierrez, Your Honor.
20 I'm sorry.

21 MR. SINDEL: Thank you.

22 Q. So this document here is Sapien's, right?

23 A. That's what it says, yes.

24 Q. And this paragraph 2, when you compare it
25 to your paragraph 2 --

1 A. Correct.

2 Q. -- is coincidentally word for word what he
3 says?

4 A. We've done the same things together, yes.
5 We participated in that same -- so the fact that what
6 he's saying and what I'm saying is absolutely true.

7 Q. I didn't ask you if it was true, sir. You
8 said you didn't copy anything from his document,
9 right?

10 A. Correct.

11 Q. And to your knowledge, he didn't copy
12 anything from yours; correct?

13 A. Correct.

14 Q. And yet the exact same words appear in the
15 same order in both documents, right?

16 A. Correct.

17 MR. SINDEL: May I approach, Your Honor?

18 THE COURT: You may.

19 Q. I'm going to show you what has been marked
20 as Defendant's Joe Gallegos Exhibit B. And is there
21 any indication at the top of that document what it
22 is?

23 A. Yes. It's Christopher Cupit's curriculum
24 vitae.

25 Q. And did you talk with Mr. Cupit or review

1 his CV before you authored your own?

2 A. That's the first time I've seen it, now
3 that you've shown it to me.

4 Q. That's the first time you've seen it?

5 A. Correct.

6 Q. Did you give him your CV so he could look
7 at and see what you had written?

8 A. I did not.

9 Q. Okay.

10 MR. SINDEL: Your Honor, I'd move the
11 introduction of Defendant's Joe Gallegos Exhibit B.

12 THE COURT: Any objection, Ms. Armijo?

13 MS. ARMIJO: No, Your Honor.

14 THE COURT: From any defendants?

15 All right. So Joe Lawrence Gallegos
16 Exhibit B will be admitted into evidence.

17 Q. So I take it that it is your testimony that
18 it is simply coincidence that the words in Sapien's
19 CV are identical to yours; correct?

20 A. Since we did the same things and we
21 participated in the same -- on the same action, I
22 probably used the same wording. But not because I
23 was trying to say it's the same as his, but because
24 it was we did -- the thing was -- I didn't change
25 anything because it was exactly what was -- what we

1 did. So --

2 Q. When you say you didn't change anything,
3 what would you have changed? You were writing your
4 own?

5 A. I probably could have changed a word or
6 two, but it still wouldn't have changed the fact that
7 it's still the same. But I see your point.

8 Q. Well, I'm simply asking you, is it a
9 coincidence, as far as you're concerned, that the
10 documents -- the paragraph in Sapien's CV is word to
11 word identical to your own?

12 A. I read his, and I agreed with it, so I put
13 it in mine.

14 Q. I thought you said earlier when asked by
15 Ms. Jacks and by myself that it was your words that
16 you put in there, and you authored it?

17 A. Correct. I agreed with those words, so
18 they were my words.

19 Q. So did you just copy and paste it into your
20 CV?

21 A. No, I believe I typed it in there.

22 Q. Did you have it in front of you so you
23 could look at it and make sure you got it word for
24 word?

25 A. I agreed --

1 Q. Please wait for the questions for the court
2 reporter.

3 A. Okay.

4 Q. So you could put it in there word for word
5 just like he did?

6 A. I believe I looked at his, and then I typed
7 what was written already, because I agreed that
8 that's also something I had done. So I didn't try
9 to -- I guess I could have changed a few words here
10 and there. But his was fine, so, yes, I understand
11 what you're saying.

12 Q. Well, I know you understand. You could
13 have told Ms. Jacks and you could have told me that
14 you copied it, some portions of your CV, from Mr.
15 Sapien's, right?

16 A. I used the same words that were there. I
17 didn't copy/paste.

18 Q. I didn't say copy and paste, did I?

19 A. You said copy.

20 Q. You did that, right?

21 A. I used those words, yes.

22 Q. You copied it, right?

23 A. Okay, I copied it.

24 Q. When you said earlier "I used my own
25 words," that wasn't accurate?

1 A. Yes. What I meant by using by my own words
2 is that I agreed with the words that he had put on
3 there, so yes, I used the same words. But I agreed
4 that those were the words that I was going to use.
5 So they were my own words.

6 Q. So you didn't go through that same process
7 with Mr. Cupit, right?

8 A. No, sir.

9 Q. I'm going to show you what's previously
10 been marked as Defendant's Exhibit Joe Gallegos
11 Exhibit B. Do you see that paragraph 2 right here?

12 A. Yes, I do.

13 Q. Okay. Compare that paragraph to the words
14 that you used in your paragraph about your work with
15 the FBI.

16 A. Correct.

17 Q. Word for word the same, right?

18 A. They appear to be yes.

19 Q. I don't want to rush you.

20 A. One of them says "telephone calls," and the
21 other one says "telephone tolls."

22 Q. Other than that, they're absolutely
23 identical, right?

24 A. They're the same, with the exception of
25 telephone calls and the telephone tolls.

1 Q. What are telephone tolls?

2 A. Well, I would imagine that's another word
3 for telephone calls.

4 Q. Well, telephone tolls, that comes from your
5 CV, right? 17, your CV, right?

6 A. It might have been just a miswriting.

7 Q. Telephone tolls?

8 A. It would have been a misspelled word.

9 Q. That's your CV?

10 A. Correct.

11 Q. Can you imagine that telephone tolls and
12 telephone calls are the same, or do you know?

13 A. No, I don't know. That's why I'm saying it
14 might have been a misspell.

15 Q. Are there any other portions of Mr.
16 Sapien's CV that you copied, that aren't your words?

17 A. I'm sure I used the same words in certain
18 areas, but I don't think Mr. Sapien has had the same
19 experiences and training that I have.

20 Q. I didn't ask you that. Were there any
21 other words that you specifically copied from his CV?

22 A. Not that I'm aware of.

23 Q. I'm showing you again what was previously
24 marked as Defendant's Joe Gallegos Exhibit A. It has
25 special training and certification, bullet points; is

1 that right?

2 A. Correct.

3 Q. And are those -- that special training and
4 certification, is that exactly identical to what
5 appears in your --

6 A. I don't know. I can't see mine. I believe
7 there are different dates involved in that. So it's
8 not exactly identical, no.

9 Q. But the words -- not the dates, the words
10 are identical, are they not?

11 A. Well, we work together, as a team we do
12 things together. So it's not uncommon that we would
13 have done the same things, yes.

14 Q. I'm not saying what you did. I'm saying
15 what you put in your CV.

16 A. Yeah, they're not identical at all, sir.

17 Q. They're not identical at all?

18 A. Not identical because the dates are
19 different.

20 Q. Other than that, are they identical?

21 A. Other than that, I would agree, yeah,
22 they're primarily identical.

23 Q. And you say probably, do the first four
24 bullet points --

25 A. If you're asking me directly if they're

1 identical, no, they're not identical, because they
2 don't have the same dates. So I'm not sure what
3 you're getting at.

4 Q. I'm getting at the fact that other than the
5 dates, did you copy these from Mr. Sapien's CV?

6 A. No. I looked over his CV, and I agreed
7 that we have done the same things at the same time;
8 that I have done those things as well. So, yes, I
9 used -- I didn't read it, if that's what you're
10 asking. I used the same method, the same format that
11 he used, yes.

12 Q. I mean, it's really simple. You could say,
13 yeah, I copied them except for the dates, if that's
14 true.

15 A. Are you asking me if I lied on it?

16 Q. No, I didn't ask you that. I asked you if
17 you copied it?

18 A. I'm not sure what you're getting at.

19 Q. If you're concerned about that, you can
20 tell us. I'm only asking whether you copied it?

21 A. I used the same format.

22 Q. Did you use the same words, sir?

23 A. I may have used the same words with
24 different dates.

25 Q. Did you use the same words as contained in

1 Mr. Cupit's, Defendant Joe Gallegos Exhibit B?

2 A. No, because I never looked at his.

3 Q. Are you looking at it now? Are you looking
4 at your screen?

5 A. Are you asking me if I used his to do mine?

6 Q. I'm asking if you used the same words?

7 A. That's the way I'm interpreting what you're
8 saying, sir, so --

9 Q. I'm sorry I wasn't clear. Did you use the
10 same words?

11 A. I did not, because I didn't see Cupit's.
12 Are they the same words there, yes.

13 Q. Why don't you take a look at the words he
14 used to describe bullet point one.

15 A. I don't know what he used. I didn't do
16 his.

17 Q. It's right there in front of you.

18 A. What are you asking me?

19 Q. I'm asking you if you used --

20 A. If I used?

21 Q. Yeah.

22 A. If I used what Cupit wrote?

23 Q. If you used the same words that Cupit used
24 to describe the training and certification?

25 A. I never looked at his, so I didn't use the

1 same words. Are the same words there? Yes.

2 Q. Look at it now.

3 A. You're asking me if I used them, and I said
4 I didn't use them. If you're asking me if they're
5 identical the way they're written now, yes.

6 Q. Okay. So they are identical by
7 coincidence?

8 A. Except for the dates. We worked together.
9 We've been working together.

10 Q. Sir, I'm sorry --

11 A. Well, I'm explaining why they would be
12 identical.

13 Q. If I need to know why, I'll ask you. I'm
14 just asking you now are they identical?

15 A. Yes.

16 Q. Now, I take it that you have never -- do
17 you know what a Daubert hearing is?

18 A. I don't.

19 Q. And you know that's what we're doing now,
20 right?

21 A. I've heard the term. I don't know what it
22 is.

23 Q. Well, have you seen it in the six pages
24 that you've reviewed of the Government's pleading in
25 this case?

1 A. Excuse me?

2 Q. You said yesterday that you read document
3 1299.

4 A. Correct.

5 Q. And did you see the word Daubert,
6 D-A-U-B-E-R-T, in that document?

7 A. Yes, sir.

8 Q. And did you understand the words and the
9 context of that particular word?

10 A. I believe so, yes.

11 Q. Do you understand that's why we're here
12 today?

13 A. Correct.

14 Q. To determine whether you are an appropriate
15 expert to testify in this case?

16 A. Correct.

17 Q. And this would be the very first time that
18 you've testified as an expert?

19 A. Correct, sir.

20 Q. You've never been qualified as an expert in
21 any federal or state court?

22 A. Correct.

23 Q. And no one has ever challenged before your
24 qualifications as an expert in court?

25 A. Not as an expert, no.

1 Q. The other day you said that you had
2 lectured on prison gangs from all over the country?

3 A. I've heard lectures on prison gangs from
4 all over the country. And I have -- from information
5 I have gathered from these lectures and stuff, I've
6 incorporated them into my PowerPoints as lectures,
7 yes.

8 Q. And do you have a PowerPoint that you use
9 when you do the lectures that you referred to in your
10 original CV?

11 A. The presentations, yes.

12 Q. And do you still have that PowerPoint
13 available to you?

14 A. I do, sir.

15 Q. And would you make it available to the
16 Government so they could make it available to us?

17 A. It's the property of NMCD, so I would have
18 to get permission to do that.

19 Q. Can you do that? Can you try to do that?

20 A. I could ask. I could ask.

21 Q. Now, you said -- have you ever made a
22 presentation or a lecture outside the State of New
23 Mexico?

24 A. No, sir.

25 Q. So, basically, all your academics or all

1 your efforts to advise other individuals concerning
2 your knowledge has always been confined to New Mexico
3 Department of Corrections and law enforcement?

4 A. To law enforcement within New Mexico, yes.

5 Q. I think you said something about Homeland
6 Security and FBI. I assume that was also in New
7 Mexico?

8 A. Yes, sir.

9 Q. Now, when you say you worked for the FBI
10 Task Force, do they provide you with any salary?

11 A. They do not.

12 Q. Do you have any identification as a member
13 of the FBI Task Force?

14 A. Not anymore, I don't.

15 Q. Well, it says 2015 to the present, right?

16 A. Correct.

17 Q. That's today.

18 A. That's because I changed jobs. I don't
19 anymore.

20 Q. So when did you stop being an FBI Task
21 Force agent?

22 A. I don't know if I've stopped. I just
23 haven't participated in anything.

24 Q. So when you talked about serving search
25 warrants and talking about arrests, and talking about

1 surveillance --

2 A. Correct.

3 Q. -- when did you stop doing that as a member
4 of the FBI Task Force?

5 A. Probably on the surveillance --

6 Q. All right. We'll break it down each
7 category, okay? When did you stop conducting
8 surveillance as a member of the FBI Task Force?

9 A. I don't recall. It's been --

10 Q. Years?

11 A. No, probably about six months, a year,
12 maybe.

13 Q. Six months or a year?

14 A. Yes.

15 Q. Do you remember the last person you
16 conducted surveillance on?

17 A. No, I don't. I don't remember.

18 Q. You talked about serving subpoenas. Do you
19 still do that for the FBI, or is that something --

20 A. I haven't assisted in doing that in a
21 while, no.

22 Q. How long is "a while"?

23 A. Probably a year or so.

24 Q. A year or so. And in terms of serving
25 arrests -- or search warrants, when was the last time

1 you did that for the FBI?

2 A. Maybe a year ago; six months, a year ago,
3 something like that.

4 Q. Would it be safe to say that you really
5 haven't been performing any function on the FBI Task
6 Force for about a year?

7 A. Other than sending any available
8 information that they may need.

9 Q. I mean, they may --

10 A. Other than that, no. If they've asked me
11 to listen to a phone call here or there, maybe. But
12 not on the streets, no.

13 Q. So you really haven't been working with the
14 FBI Task Force --

15 A. Indirectly, right.

16 Q. -- for at least a year, right?

17 A. I haven't -- I'm still involved. I haven't
18 been working with them now for a little bit.

19 Q. When you said on your CV, 2015 to the
20 present --

21 A. Correct.

22 Q. -- it really ended in 2016?

23 A. Well, if they needed me to go with them
24 today, I would still go with them.

25 Q. I'm sorry? I didn't understand.

1 A. That just means that I'm available when --
2 if they needed me to, yeah.

3 Q. I suppose we all are available --

4 A. So that's still present.

5 Q. -- to provide the FBI with information, but
6 that doesn't mean we are on the task force?

7 A. I'm explaining that that's the reason that
8 it's still to present. I don't believe I've ever
9 been taken off.

10 Q. The same thing that Mr. Sapien said, "2015
11 to the present," isn't it?

12 A. I suppose so.

13 Q. Look on the screen and see -- you don't
14 have to. Is that the same thing that Mr. Cupit said?

15 A. It appears it is.

16 Q. Did you ever possess any sort of personal
17 identification that indicated that you were a member
18 of the FBI Task Force, a badge, a card, anything like
19 that?

20 A. Just written documentation that I was.

21 Q. Documentation? What are you referring to
22 when you say "documentation"?

23 A. Well, if I worked any overtime for them and
24 stuff, I would get paid. For example, if I was
25 conducting something as part of the task force, there

1 is documentation that I was part of that task force,
2 so I would be compensated back for -- if I had to
3 stay overnight in a hotel or anything like that.

4 Q. So the only documentation --

5 A. So I was identified, yes, so I was
6 identified as a task member.

7 Q. So the documentation that you were
8 referring to is basically part of your compensation
9 package?

10 A. Well, in order for the New Mexico
11 Corrections Department to be compensated back for
12 overtime paid for the task force work that I've done,
13 I had to be identified as a task force member.

14 Q. All right. So you want to make sure that
15 you get identified as a task force member so that you
16 receive overtime pay or compensation for your
17 expenses; true?

18 A. True.

19 Q. Now, did the federal government ever pay
20 you for your role as a member of the FBI Task Force?

21 A. In the form of overtime, yes.

22 Q. So the federal government would issue you
23 checks directly?

24 A. No.

25 Q. All right. Let me rephrase that question

1 then. Did you ever receive compensation from the
2 federal government for your work as a member of the
3 FBI Task Force?

4 A. Yes, through the Department of Corrections.

5 Q. So that money went to the Department of
6 Corrections to reimburse them; is that how you
7 understand it?

8 A. Correct.

9 Q. So you never got a 1099 from the federal
10 government, did you? Do you know what a 1099 is?

11 A. The only -- no.

12 Q. Then don't answer the question, if you
13 don't know. Don't guess at it.

14 A. Okay.

15 Q. A 1099 is a form that is part of the income
16 statements that is part of your tax returns --

17 A. Okay.

18 Q. -- indicating you've been paid by an agency
19 or an individual for work that you performed. Did
20 you have a 1099 --

21 A. No, sir.

22 Q. -- just wait -- from the federal
23 government?

24 A. No.

25 Q. Do you receive retirement benefits?

1 A. No.

2 Q. From the federal government?

3 A. No.

4 Q. So really, the FBI Task Force, up until,
5 let's say, 2016, was just in name only, right?

6 A. I don't know.

7 Q. Now, I had started out by asking you
8 questions concerning your lecturing for -- about
9 various prison gangs, and that would be besides the
10 one in New Mexico. You said all over the nation.
11 Can you tell me the names of any of those prison
12 gangs?

13 A. The prison gangs all over the nation?

14 Q. Yes.

15 A. Well --

16 Q. That were part of your lecture series.

17 A. Yeah, easily the ones that surrounded areas
18 close to New Mexico, like Texas, California --

19 Q. Okay.

20 A. -- Nevada.

21 Q. Give me the names of those.

22 A. The major gangs within Texas would be the
23 Barrios Aztecas, the Texas Syndicate, the Mexicali,
24 the Surenos, the Tango Blast, and the Aryan
25 Brotherhood out of Texas.

1 Q. Were they all basically prison gangs that
2 were populated by members of the Hispanic or Latino
3 community?

4 A. Yes, with the exception of the Aryan
5 Brotherhood.

6 Q. The Aryan Brotherhood; that was in Texas?

7 A. Correct.

8 Q. That was in California?

9 A. California; you have the California Aryan
10 Brotherhood out of California, then you have the
11 Mexican Mafia, the Nuestra Familia, the Surenos.
12 Those are the primary gangs within -- and then of
13 course, Black Guerilla.

14 Q. And did you testify concerning their codes
15 of conduct? Or not testify, I'm sorry. Did you
16 lecture concerning those particular prison gangs'
17 codes of conduct?

18 A. Just their codes of conduct, just
19 variations of it.

20 Q. Variations of it. Variations from gangs
21 you were more familiar with?

22 A. My point was -- my point in the
23 presentations was to show the similarities in prison
24 gangs and organizational structure.

25 Q. Okay. And, for example, what did you

1 understand was the organizational structure of the
2 Aryan Brotherhood?

3 A. The organizational structure; that they
4 have an ideology of white supremacy.

5 Q. I don't want to interrupt, but I didn't ask
6 you about their ideology. I asked you about their
7 structure. We all know what their ideology is. You
8 don't have to be an expert to figure that out.

9 A. Well, their ideology is what makes them --
10 is part of what their structure is.

11 Q. I'm talking about structure; you had talked
12 in response to Ms. Jacks' questions about their
13 structure of the SNM, so I'm trying to draw some
14 parallel when you give these lectures about the Aryan
15 Brotherhood, what you know about the structure of
16 that particular prison gang?

17 A. Oh, how the structure is as far as their
18 hierarchy?

19 Q. Yes.

20 A. The hierarchy of the -- they also operate
21 under a board of directors or individuals that run
22 the Aryan Brotherhood, and then they have their
23 captains and soldiers as well.

24 Q. Captains and soldiers and a board of
25 directors?

1 A. A panel, if you will.

2 Q. I want you to use your words, not copy them
3 from somewhere else. Is it a board of directors or a
4 panel?

5 A. It's a panel.

6 Q. Do you know how they're selected?

7 A. The same concept. Primarily the same
8 concept, where individuals are brought in and voted
9 upon, and a sponsor -- they're sponsored. And they
10 go through an orientation process, as well as the
11 structure indicates that they have a
12 blood-in-blood-out.

13 Q. Okay. They go through an orientation
14 process, is that what you testified to?

15 MS. ARMIJO: Objection, argumentative.

16 THE COURT: Overruled.

17 MR. SINDEL: I'll withdraw it.

18 THE COURT: I think it's okay cross.

19 Q. Let's talk a little bit about the source of
20 the information that you have that you believe makes
21 you an expert in this case.

22 What I heard from your testimony yesterday
23 and today, it is almost, it is primarily based upon
24 interviews that you have had or other members of your
25 staff have had with people that are familiar with the

1 SNM; correct?

2 A. That are members.

3 Q. Well --

4 A. Yes. So that would make them familiar,
5 yes.

6 Q. I mean, you know, the people that you talk
7 to in law enforcement, they're not members, right?

8 A. Correct.

9 Q. Okay. So it's all based upon interviews
10 that you have conducted, really, isn't that --

11 MS. ARMIJO: Objection; misstates --

12 Q. -- the bottom line?

13 MS. ARMIJO: Objection; misstates his
14 testimony.

15 THE COURT: Well, he can clear it up if
16 it's not correct. Overruled.

17 Q. Isn't that the bottom line?

18 A. Could you repeat your question?

19 Q. That the information that you receive, that
20 you use in order to qualify as an expert is based
21 upon interviews that you have done with law
22 enforcement, cooperating individuals, members of the
23 SNM?

24 A. That I have done and other people have
25 done.

1 Q. So you or other staff members, right?

2 A. Correct. Or law enforcement.

3 Q. You said that some gang members or other
4 members of the prison population sometimes seek
5 favors as a result of their cooperation; correct?
6 I'm not saying you grant them. I'm saying they ask
7 for them.

8 A. You're asking me if inmates, when I
9 interview them, ask me for favors?

10 Q. I'm asking whether or not one of the
11 purposes of them providing information is to see if
12 they can secure better housing, or a transfer, or
13 some favor from the prosecuting authorities, anything
14 like that?

15 A. I suppose in some cases.

16 Q. Okay. I mean, it wouldn't be unusual at
17 all for them to see if there is something they could
18 possibly gain from giving you information that may,
19 as you said, put their lives in danger?

20 A. Well, I suppose anytime they give
21 information, they want to gain something from it.

22 Q. So, you know, when they go in there to talk
23 to you, and you say: What do you know? They can
24 sometimes say, Well, what can I get if I tell you?

25 A. There have been instances when that has

1 occurred, yes.

2 THE COURT: Mr. Sindel, would this be a
3 good time for us to take our lunch break?

4 MR. SINDEL: I think I can just finish up
5 this particular topic in a few minutes, if that's
6 okay with you.

7 THE COURT: I need to attend to some stuff.
8 So why don't we take a little bit of an earlier lunch
9 break. We'll be back in about an hour.

10 MR. SINDEL: Well, as they say, it's your
11 show.

12 THE COURT: All right. See you in about an
13 hour.

14 (The Court stood in recess.)

15 THE COURT: All right. We'll go back on
16 the record. Has everybody got counsel? I know Mr.
17 Castle is not going to be here this afternoon, so
18 he's not here. Everybody else got counsel?

19 All right. I stepped up here to the bench
20 to get some papers, and the men looked like they were
21 enjoying their pizza. Was it the Domino's?

22 DEFENDANT TROUP: Yes, sir.

23 THE COURT: Was it good?

24 DEFENDANT TROUP: Yes, sir.

25 THE COURT: All right.

1 DEFENDANT TROUP: You should have had some
2 with us, Judge.

3 THE COURT: You don't want any ex parte
4 contact. They did ask for beer, and I just -- might
5 be going a little far there.

6 MR. SINDEL: Not now.

7 DEFENDANT BACA: We really appreciate it.

8 THE COURT: All right. You thank your
9 counsel for that.

10 All right. Mr. Martin, I'll remind you
11 you're still under oath. Mr. Sindel, if you wish to
12 continue your cross-examination, you may do so at
13 this time.

14 MR. SINDEL: Thank you, Your Honor.

15 THE COURT: Mr. Sindel.

16 BY MR. SINDEL:

17 Q. I hope you had a good lunch.

18 A. I did.

19 Q. Got a chance to relax, gather your
20 thoughts.

21 A. Yes, sir.

22 Q. So we left off when we were talking about
23 the fact that a number of people who come to you to
24 provide you with information are seeking some sort of
25 assistance or benefit; correct? That's what you

1 testified to. But if you want to change it, you can
2 change it.

3 A. Yes, sir. Looking for some kind of
4 assistance, correct, in some cases.

5 Q. Not 100 percent, but, as you said to
6 Ms. Jacks, these guys really are good at manipulating
7 people, right?

8 A. I believe she said that.

9 Q. You answered yes?

10 A. Yes. There are individuals that are good
11 at manipulation, yes.

12 Q. So you agreed with her; when she said it,
13 you said yep, that's right?

14 A. Some people are good at manipulation.

15 Q. So some of the things they're looking for
16 may be better housing or different housing?

17 A. Yes, different housing.

18 Q. Okay. And they might be looking for better
19 visits with their family?

20 A. I don't have control of whether they were
21 getting better visits or not.

22 Q. I'm not asking you that, sir.

23 A. If they're reclassified, will they get
24 different visits? On some occasions, yes.

25 Q. And those visits can include contact

1 visits?

2 A. Yes, sir.

3 Q. Okay. And they can include visits with
4 their wives and their children and their girlfriends
5 and things like that?

6 A. Correct, sir.

7 Q. And it can be contact visits?

8 A. Correct, sir.

9 Q. And you said the other day when you were
10 testifying, you talked about monitoring those visits.
11 And sometimes they don't get monitored that well.

12 A. I would imagine that some visits are not
13 monitored well.

14 Q. Now, are those -- when an inmate has a
15 visit that occurs within a closed room, are those
16 monitored as well?

17 A. We try to keep a visual monitor, yes.

18 Q. And when you say a "visual monitor," is
19 that a human being with eyeballs, or that is a
20 camera?

21 A. We'll do rounds and do -- depending on what
22 facility you're at, so different facilities are
23 different as far as their visitation. So, for
24 example, the contact visits are out in the open, and
25 there is an officer keeping observation. And then

1 there are individuals that are in segregated areas,
2 where they talk over the phone, where there is no
3 contact visit. And those -- depending on what
4 facility you're at, you can keep a visual on that as
5 well. Or in other areas, you'll have to -- we can
6 also do it by camera.

7 Q. You can also do it by camera. So that, at
8 least in the situation in which an inmate -- well,
9 let me ask you this: There are no contact visits
10 with inmates in a room where they can't be watched;
11 correct?

12 A. They should be monitored, correct.

13 Q. And you said the contact visits, that
14 occurs out in the open, because there is a
15 correctional officer there, and he can watch and make
16 sure that everything is sort of copacetic?

17 A. Correct, sir.

18 Q. There wouldn't be an occasion for a contact
19 visit in a closed room, correct, for an inmate?

20 A. No.

21 Q. And even if they're informing, and even if
22 they're providing information, that's not going to
23 occur, from what you understand of the rules and
24 regulations of the Department of Corrections?

25 A. I'm not sure I understand your question.

1 Q. Well, it's not -- in other words, if it's
2 contact, it's in the open, right?

3 A. It's in the open.

4 MS. ARMIJO: Your Honor, I'm going to
5 object, because now we're beyond his basis for expert
6 opinion. And I believe he's fishing for information
7 on a different case.

8 THE COURT: How do you connect it with the
9 Daubert/Rodriguez hearing we're having, Mr. Sindel?

10 MR. SINDEL: Well, I think that this
11 basically goes to show that there are inmates who are
12 cooperating, who receive significant benefits as a
13 result, and therefore, their information, and he's
14 testified that's basically all he relies on is the
15 information he gets from inmates. So I'm trying to
16 show that there is a motivation behind the inmates
17 for providing this information.

18 THE COURT: Well, it's kind of difficult --
19 the breadth of his testimony -- to cabin it too much.
20 I'll give you a little leeway on this and overrule
21 the objection. But I think you're making your point
22 so maybe you don't need to spend too much time on it.

23 MR. SINDEL: I will not, Your Honor.

24 THE COURT: Mr. Sindel.

25 Q. Do informants who are providing information

1 in connection with this investigation receive
2 conjugal visits?

3 A. No.

4 Q. Never?

5 A. They're not allowed conjugal visits.

6 Q. And that would include visits that include
7 physical sexual contact?

8 A. Correct.

9 Q. Have you interviewed the defendants in this
10 case before the case was brought?

11 A. I've interviewed some, yes.

12 Q. Are there any that you have not
13 interviewed?

14 A. Yes.

15 Q. Okay. My client is Joe Gallegos.

16 A. Correct.

17 Q. And, Mr. Gallegos, have you interviewed
18 him?

19 A. I've never interviewed Joe Gallegos.

20 Q. His brother, Andrew, have you ever
21 interviewed him?

22 A. I've never interviewed Joe Gallegos or his
23 brother.

24 Q. Okay. And the inmates you have
25 interviewed, that are now defendants in this case,

1 have you provided the memorandum or notes that you
2 took as a result of that interview to the Government?

3 A. I have not.

4 Q. Are they stored anywhere?

5 A. My memorandums on interviews are turned
6 over to the STIU coordinator.

7 Q. I'm sorry?

8 A. Any interviews that I conducted, written
9 interviews or memorandums, are turned over to the
10 STIU coordinator.

11 Q. Who is that individual now?

12 A. At the Penitentiary of New Mexico, is that
13 what you're asking?

14 Q. Yes.

15 A. Adam Vigil.

16 Q. Could you spell that name, please, for me?

17 A. Adam Vigil, A-D-A-M. V-I-G-I-L. Vigil.

18 Q. I'm a Yankee.

19 So this individual, he then -- he gets all
20 these interviews, notes, and materials that you
21 prepared in connection with this defendant, and then
22 it is up to him whether he distributes them to the
23 Government or anyone else, right?

24 A. I suppose if they wanted them, that's how
25 they would acquire them.

1 Q. In other words, the place to go, if you
2 want to see your notes, your work product, is go to
3 Adam?

4 A. Correct. Well, he's the one I forward all
5 my stuff to, since he's my boss.

6 Q. Is there any particular location, either
7 physical or within the computerized system, where
8 these items are stored?

9 A. I suppose some are stored. The purpose is
10 not to provide them to the Government. The purpose
11 of doing the interview is to establish different
12 things. For example, if I'm interviewing an
13 individual that wants to seek protective custody,
14 that will go to the coordinator, and the coordinator
15 will get ahold of the proper individuals to make sure
16 that that happens.

17 If I'm interviewing an individual
18 because -- let's say, for example, he's in the Level
19 5 system and he needs to go to a Level 4 system, or
20 to a Level 3 system, then that documentation would be
21 given to Adam Vigil. And again, he would distribute
22 that to CBC or whomever -- unit managers, whoever is
23 responsible for the movement of that inmate.

24 Q. And I understand that it is not routine to
25 provide that information to the Government. But if

1 it was requested and went through proper channels,
2 that information would be available; correct?

3 A. Correct.

4 Q. And that information, if it had gone
5 through proper channels, could be made available to
6 the Government, and through them to the defense
7 lawyers in this case; correct?

8 A. I guess I don't know how they do their
9 business.

10 Q. And in terms of -- you said -- had you
11 interviewed any defendants that are involved in this
12 case, or the related case, who were seeking
13 protective custody?

14 A. Have I interviewed them before?

15 Q. Yes.

16 A. Yes.

17 Q. Have you interviewed those who were seeking
18 protective custody that are defendants in this case
19 or the related case?

20 A. I probably have.

21 Q. I'm not asking the names. But can you
22 think of any particular individual, as you sit there
23 now, that falls outside of the "probably" and the
24 ideas?

25 A. Yes.

1 Q. So the answer really would be yes?

2 A. Yes.

3 Q. All right. Now the STIU coordinator, that
4 is a individual who is above you in terms of
5 supervision?

6 A. He's my boss.

7 Q. Okay. Have you ever made application for
8 that particular position yourself?

9 A. I believe I applied for the coordinator's
10 position at Southern at one point.

11 Q. At one point?

12 A. Yes, I'm trying to remember.

13 Q. When was that?

14 A. I think it may have been in 2012 or
15 something like that.

16 Q. And when you applied for that, is that a
17 formal procedure in which you fill out an
18 application?

19 A. No. You have to go through the state
20 government SPO.

21 Q. And do you know whether or not there is any
22 test or qualifications that you have to have in order
23 to secure a designation to that position?

24 A. No.

25 Q. So, you know, you go through the state

1 government, and then they just say, look at your
2 application, and they say yay or nay?

3 A. They determine if I meet the
4 qualifications.

5 Q. But you don't have to go in for an
6 interview?

7 A. If SPO says you met the qualification, then
8 they set up an interview, yes.

9 Q. No test?

10 A. Interview.

11 Q. That person wouldn't have to identify the
12 policies or procedures either; correct?

13 A. Depends what the questions are.

14 Q. Now, the Exhibit 22, which you had referred
15 to, the packet concerning Mr. Baca, that basically
16 exists for other defendants in this case, a similar
17 packet; is that right?

18 A. Correct.

19 Q. I'm going to show you what's been
20 previously marked as Defendant Joe Gallegos Exhibit
21 C. And that starts at page number 9386. Do you
22 recognize that document as being the packet that
23 bears in connection with Mr. Gallegos' status in
24 terms of STG or Security Threat Group?

25 A. Yes, sir, it seems to be similar.

1 MR. SINDEL: Your Honor, I'd move the
2 admission of Defendant Joe Gallegos Exhibit C.

3 THE COURT: Any objection?

4 MS. ARMIJO: No, Your Honor.

5 THE COURT: All right. Any objection from
6 the defendants?

7 All right. Joe Lawrence Gallegos' Exhibit
8 3 will be admitted into evidence -- oh, I meant C.

9 Q. Okay. I'm going to show you basically the
10 cover page on this Exhibit C. That contains a
11 picture of Mr. Gallegos, his name up there in the
12 upper left-hand corner; is that right?

13 A. Correct.

14 Q. Can you see there his age?

15 A. Yes.

16 Q. 46; is that right?

17 A. I see it says 46, yes, as his age.

18 Q. And you see there under gangs?

19 A. Correct.

20 Q. Sindicato de Nuevo Mexico, suspected;
21 correct?

22 A. Correct.

23 Q. And Eastside Locos, ESL, Valencia?

24 A. Correct.

25 Q. Suspected, right?

1 A. Correct.

2 Q. So, in other words, there hasn't been made
3 a determination as to whether or not he's a member?
4 He's simply suspected?

5 A. That's what it appears to be, sir.

6 Q. I mean --

7 A. That's what it says, yes.

8 Q. Okay. And part of that packet is the
9 criteria that you had referred to earlier on Mr.
10 Baca, you know, with a level 29. This is for Mr.
11 Gallegos; correct?

12 A. Correct, sir.

13 Q. All right. And that has group photos,
14 right?

15 A. Correct.

16 Q. And we know from the cross-examination that
17 Ms. Jacks did, that that's really nebulous as to
18 whether that's a particular aggravating circumstance,
19 since Mr. Gallegos would be living with other -- with
20 SNM designees?

21 A. Unless he was in the population setting in
22 2001.

23 Q. Do you know if he was?

24 A. I don't.

25 Q. So he gets two points for that, right?

1 A. Correct.

2 Q. And there is some CI information. That's
3 one of these -- you referred to them as rats and
4 snitches, confidential informant information, right?

5 A. That I referred to them as rats and
6 snitches?

7 Q. You did when you were testifying, you
8 called them rats or snitches, right?

9 A. I agreed that that's what they're called.

10 Q. And that's a two-point, right?

11 A. Correct.

12 Q. And he totals out at 4?

13 A. Correct.

14 Q. Is 4 sufficient to designate him as a
15 member of the SNM?

16 A. It's enough to suspect him.

17 Q. Is it sufficient to identify him as a
18 member of the SNM?

19 A. Yes.

20 Q. So when they say on page 1 he's suspected,
21 that's wrong, in your opinion?

22 A. No, it's enough to suspect him. I guess I
23 misunderstood your question.

24 Q. When that happens, just stop me.

25 A. Okay. I'm sorry.

1 Q. Don't answer a question if you don't
2 understand it.

3 A. Correct. I misunderstood your question.

4 Q. So is 4 points on the criteria sufficient
5 to identify him as a member of the SNM?

6 A. No, it's just a suspected.

7 Q. And if the photo is meaningless, he's down
8 to 2 points, right?

9 A. Correct, sir.

10 Q. This is another page of the packet
11 identifying Mr. Gallegos; correct?

12 A. Yes, it is.

13 Q. And his age is 35?

14 A. Correct.

15 Q. Nine years before the other one you had
16 seen?

17 A. Correct, sir.

18 Q. And he is still only suspected; is that
19 right?

20 A. That's correct.

21 Q. And as you said, you can keep adding things
22 to these packets if there is more information, right?

23 A. Documentation, yes, sir.

24 Q. And one of the things that you guys use is
25 tattoos?

1 A. Our documentation, yes, sir.

2 Q. And, in fact, there is only one thing -- or
3 two things that are equal to tattoos. One is a
4 self-admission, right?

5 A. Correct, sir.

6 Q. And you would certainly understand that a
7 self-admission is pretty much as good evidence as
8 you're going to get?

9 A. Correct.

10 Q. And the other that has the same consequence
11 is tattoos?

12 A. Correct, sir.

13 Q. And then also court records?

14 A. Correct.

15 Q. And, of course, you know that you just
16 can't like scrub a tattoo off, right? Once you got
17 it, you got it?

18 A. Correct, sir.

19 Q. So even the people that go into RPP, are
20 still going to still have those distinguishing
21 tattoos, aren't they?

22 A. They are.

23 Q. And people who leave and go on the street,
24 they're still going to have those tattoos; correct?

25 A. Correct, sir.

1 Q. So that classification or criteria goes on
2 forever?

3 A. It appears so.

4 Q. Blood-in-blood-out, it's always going to be
5 there?

6 A. Correct.

7 Q. Let's take a look at Mr. Gallegos'
8 notification concerning the tattoos that exist on his
9 head, his face, his rear end, or his front side. Any
10 that are designated?

11 A. From the document you're showing me, no.

12 Q. Yeah.

13 A. There is no tattoos designated.

14 Q. No tattoos. And as far as you know, there
15 have never been tattoos from the time up until he's
16 age 45, right?

17 A. There is no documentation of it, no.

18 Q. There is no documentation. When they do
19 these documentations on tattoos, do they have them
20 take off their clothes?

21 A. Yes, they do.

22 Q. So they would be able to see all of Mr.
23 Gallegos' body and make some notation as to whether
24 or not he had these damning tattoos?

25 A. Correct.

1 Q. And as part of his packet, that's an STG
2 validation, right?

3 A. It's a form that's part of the packet,
4 correct.

5 Q. And on that form, basically, it has ten
6 points to be confirmed as a member and a minimum of
7 two criteria?

8 A. Correct.

9 Q. Must be validated by STG administrator?

10 A. Correct.

11 Q. Is that the same thing as the STG
12 coordinator?

13 A. No, it's not.

14 Q. Now, is the STG administrator higher or
15 lower than the coordinator?

16 A. Higher.

17 Q. And two points makes him a suspect?

18 A. Correct.

19 Q. And these particular forms then go through
20 all the criteria, and basically, just like before,
21 check them off with a little more information.

22 A. Correct.

23 Q. And I'm assuming that, in terms of making
24 the decision whether or not that Mr. Gallegos is a
25 suspect, or nothing, it is all up to Cheryl Lackey;

1 is that right?

2 A. No, it's not. It's -- she just turns this
3 documentation in, and the coordinator would determine
4 whether she had sufficient documentation to indicate
5 he's a suspect.

6 Q. Is it the coordinator or the administrator,
7 or both?

8 A. For validation purposes, it's the
9 administrator.

10 Q. And one of the criteria that's referenced
11 there refers to information that was given by a
12 confidential informant?

13 A. Correct.

14 Q. We'll look at this paragraph here. Is that
15 the paragraph that refers to information that was
16 provided by some unknown confidential informant?

17 A. That doesn't appear to be a memorandum as
18 to the confidential informant, no.

19 Q. Well, in that packet that you reviewed, did
20 you see anywhere a memorandum that indicated his
21 membership or his cooperation or his affiliation with
22 the SNM?

23 A. Did I see in the packet the CI information,
24 is that what you're asking?

25 Q. Yeah, a memorandum, something?

1 A. I wasn't looking for it, so, no.

2 Q. I could show you again, or you can take my
3 word for it. It's not there?

4 A. I'll take your word for it if you say it's
5 not there.

6 Q. So if the group photo is meaningless and
7 the memorandum isn't there, he's down to a zero,
8 isn't he?

9 A. If the group photo is no good and the
10 memorandum is not there, and it's not in his file?

11 Q. Yeah.

12 A. Well, yeah.

13 Q. Zero?

14 A. Yeah, it would be a zero.

15 Q. On this criteria that we've been talking
16 about, do you know who it was that assigned the
17 particular numeric value to each of the headings or
18 topics?

19 A. I don't. I would imagine it was the --

20 Q. Excuse me.

21 A. I don't know.

22 Q. All right. Now, if you want to imagine
23 how, go ahead, you could do that.

24 A. I would imagine --

25 MS. ARMIJO: Objection, calls for

1 speculation.

2 THE COURT: Well, if he can do it, I'll
3 listen to his testimony. Overruled.

4 A. It may have come from the administration,
5 the New Mexico Corrections administration policy, the
6 individuals who make policy.

7 Q. And as far as you can tell, of the packets
8 you reviewed, those numerical assessments of how to
9 value the criteria have not changed for decades, have
10 they?

11 A. They don't seem to have changed very much,
12 no.

13 Q. Not very much. They haven't changed at
14 all, have they?

15 A. I don't believe they have.

16 Q. And have you ever participated in any sort
17 of process where you had input in how to value these
18 particular criteria?

19 A. No, I have not.

20 Q. Now, when somebody comes back from the
21 streets, and having been compelled to commit a
22 criminal act by the SNM members, and he comes back
23 and he's wearing all those tattoos, he's going to be
24 designated as an SNM member, isn't he?

25 A. If he has the criteria of the SNM tattoos,

1 yes.

2 Q. Now, I believe you may have been asked
3 these questions -- and if I repeat them, I
4 apologize -- but would it be fair to say that books
5 and articles and magazines and journals, the only
6 written material that you have prepared are
7 PowerPoints; true?

8 A. The only material that I have prepared?

9 Q. Written material that you have prepared in
10 connection with your expertise in gang membership and
11 conduct and behavior are PowerPoints, right?

12 A. That's fair to say.

13 Q. Okay. Has anyone ever approached you about
14 writing an article for a magazine or a journal?

15 A. I believe that's prohibited by NMDC policy.

16 Q. You believe it is, or you know?

17 A. It is.

18 Q. So that the only thing you could ever do,
19 as far as you're concerned, unless you left the
20 confines of the employment of the Department of
21 Corrections, is PowerPoint; is that right?

22 A. Unless they gave me permission to do
23 otherwise, yes.

24 Q. So it's prohibited unless they tell you
25 okay?

1 A. Correct.

2 Q. And you could go to the powers that be and
3 say, Look, I've gotten a lot of information; I'm an
4 expert; let me please write some articles for the
5 journals that will have national publication or
6 statewide publication, because I have information
7 that is valuable that I can share?

8 A. The Secretary of Corrections has the
9 ability to circumvent policy.

10 Q. Well, they have ability to allow you to do
11 that, right? It's not circumventing; it's giving you
12 permission.

13 A. Yes, he could.

14 Q. All right. So tell me how many times you
15 have approached these individuals and say: I have an
16 expertise that should be shared with the world?

17 MS. ARMIJO: Objection, argumentative.

18 THE COURT: Overruled.

19 A. I've done this through presentations.

20 Q. How many times have you approached him and
21 said: I would like to write a book, an article, a
22 journal entry, anything like that?

23 A. Never.

24 Q. You referred to a gentleman the other day
25 during your direct and again in cross-examination, a

1 Dr. Robinson. Do I have that right?

2 A. Yes, Dr. Robinson.

3 Q. What is Dr. Robinson's first name?

4 A. His first name is Robert Robinson.

5 Q. And you said he taught -- and I'm sorry, I
6 just didn't hear what you had said the other day.

7 A. I said he had a Ph.D.

8 Q. Is he a professor somewhere, or does he
9 just have a Ph.D.?

10 A. He has a Ph.D. in philosophy. I don't know
11 if he's a professor anywhere.

12 Q. So you don't know if he is actively
13 instructing students on matters that might concern
14 prison gangs or street gangs or anything like that;
15 correct?

16 A. He works directly for the Department of
17 Corrections as an educator.

18 Q. Where?

19 A. I believe different prisons. But he works
20 directly for the Department of Corrections.

21 Q. You mean New Mexico Department?

22 A. Yes.

23 Q. Okay, then. So that basically, am I
24 understanding that your information is primarily
25 confined to the boundaries and borders of the State

1 of New Mexico?

2 A. I'm not understanding the question.

3 Q. All right. Well, are you consulting with
4 other individuals concerning your area of expertise
5 that are in other areas besides the State of New
6 Mexico?

7 A. To write my PowerPoints?

8 Q. I mean, do you pick up the phone, or do you
9 send an email, or do you ask to visit someone who is
10 not within the New Mexico Department of Corrections
11 so you can discuss your findings and their beliefs?

12 A. Yes.

13 Q. All right. So there are other people,
14 right?

15 A. There is another person, yes.

16 Q. There is another person. Who is that other
17 person?

18 A. Al Valdez.

19 Q. Alan Valdez?

20 A. Al. A-L. Valdez.

21 Q. And where is Mr. Valdez located?

22 A. He's a professor at the University of
23 California Irving (sic).

24 Q. Irvine?

25 A. Irvine, I'm sorry.

1 Q. That's okay. Does he have a Ph.D. in
2 philosophy, too?

3 A. No, sir.

4 Q. How often would you say you consult with
5 Professor Valdez?

6 A. On occasion I've consulted with him. He's
7 a gang expert in California. He spent over 27 years,
8 I believe, or 30 years, as a gang unit police officer
9 in California.

10 Q. You said a police officer; is that right?

11 A. Correct.

12 Q. Part of his time was on the streets?

13 A. As a gang unit officer, yes.

14 Q. And he went on to become a professor. Do
15 you know anything of his educational background?

16 A. I don't know too much about his educational
17 background, other than I consult with him on gang
18 issues.

19 Q. Would it be fair to say that his background
20 is very similar to you as primarily experience?

21 A. I think he's written over 13 books.

22 Q. Same number as Dr. Robinson?

23 A. I never said Dr. Robinson wrote 13 books.

24 Q. Has Dr. Robinson written any books?

25 A. I don't know.

1 Q. So when you said "13 books," I may have
2 misunderstood. You were referring to this
3 individual, Mister or Professor Valdez?

4 A. Correct.

5 Q. Have you ever communicated with him in
6 writing, either by email or letter?

7 A. Yes.

8 Q. And are those documents or those letters or
9 emails saved?

10 A. Yes.

11 Q. Those are in the backup material?

12 A. I believe they are.

13 Q. Do you put them in any particular file or
14 folder?

15 A. They may be in my gang education folder.

16 Q. Your gang education folder? Is that what
17 you call it?

18 A. Correct. That's what I named it in my
19 folder.

20 MR. LOWRY: Your Honor, may we have a
21 moment?

22 MS. DUNCAN: I was just wondering if the
23 Court would excuse me. I have a family medical
24 emergency and I need to go.

25 THE COURT: No, that's fine.

1 Q. If the biography at the University of
2 California Irvine indicates that Al Valdez has
3 published four books, not 13 --

4 A. Okay. I may have been mistaken on the
5 amount.

6 Q. By nine books?

7 A. Well, I thought he had told me 13. I've
8 read a couple of his books.

9 Q. You read his books?

10 A. A couple.

11 Q. All right. Four?

12 A. I've read --

13 Q. Three? Two?

14 A. I've read two of his books.

15 Q. I think the other day you said that you had
16 read other books. Can you provide us with the names
17 and the authors of the books that you have read that
18 have informed you concerning gang activities in the
19 various prisons throughout United States?

20 A. One was written by Rene Enriquez, "Boxer,"
21 a former Mexican Mafia member. Another one was Mr.
22 Medina, was also a former member of the Mexican
23 Mafia. And I'm horrible as far as remembering titles
24 and names of the books.

25 Q. But at least the two that you remember were

1 written by former gang members; is that how you
2 understand it?

3 A. Yes, the two, yes.

4 Q. They're the Mexican Mafia, both of them?

5 A. Correct.

6 Q. None of them with the SNM?

7 A. I've not read any books on the SNM, no.

8 Q. Do you know what the definition of the word
9 "enterprise" is?

10 A. Enterprise, as I believe it, is a
11 structured organization.

12 Q. Do you know what association-in-fact means?

13 A. Association-in-fact?

14 Q. Yes.

15 A. I can't say that I do.

16 Q. Now, we had talked a little bit about your
17 work as an FBI uncertified task force participant.
18 Have you investigated the SNM outside the prison
19 walls?

20 A. Usually, when the FBI calls me and I
21 accompany them, I don't really always know exactly
22 what -- other than the briefing -- what we're going
23 to do. But the investigation is not conducted by me.

24 Q. All right. Who from the FBI regularly
25 calls you to assist them in their activities?

1 A. Usually, if I go, it will be Mr. Bryan
2 Acee.

3 Q. And I think you said it's been about a year
4 since any of those things have happened. Do you do
5 any active investigation of the street activities of
6 any prison gangs?

7 A. I don't.

8 Q. And we heard testimony that the SNM rules
9 have changed over time; is that true?

10 A. Correct. Some of their rules and how they
11 run.

12 Q. Have they changed since 2001, to your
13 knowledge?

14 A. Yes.

15 Q. And what are the changes that you're aware
16 of that took place around 2001?

17 A. In particular to what?

18 Q. You said you knew of rule changes. I'm
19 asking you what are the rule changes?

20 A. The rule changes?

21 Q. Yeah.

22 A. On how they conduct business. Well, when
23 they were segregated, of course, their rules changed,
24 because they were no longer in a population setting
25 so they couldn't control the population setting

1 anymore. So a lot of their rules, as far as how they
2 collected money, how they taxed other individuals,
3 that was no longer applicable to them; they couldn't
4 do that anymore. So that kind of rule has changed,
5 as far as being able to assault other inmates.

6 Q. Hold on for just a second. The rule about
7 collecting money, what was it before it changed, and
8 what is it after it changed?

9 A. What's the rules of collecting money? In
10 the population setting, they would have one of their
11 soldiers -- if another inmate in the population
12 setting owed them money, they would go and collect
13 that money. If that money wasn't paid, they would
14 get assaulted.

15 Afterwards, they're in the segregation
16 population setting, so the rules of that would change
17 a lot differently. So they weren't able to actively
18 assault other inmates.

19 Q. I know. But what was the change in the
20 rules?

21 A. Well, the change in the rules would be they
22 would have to do it on the outside, not on the
23 inside.

24 Q. Do it on the outside?

25 A. They would have to figure out a way to

1 collect the money on the streets and not inside the
2 prison. So --

3 Q. PayPal? I mean, how do they get the money
4 outside in to the inmates on the inside?

5 A. Family members.

6 Q. And when it was inside, did somebody come
7 up and just pull out a roll of dollar bills, and give
8 it to someone?

9 A. They were paid in canteen sometimes. And
10 other times money was added onto their books by
11 family members.

12 Q. So the family members were doing it before
13 this rule change, and the family members were doing
14 it after this rule change, right?

15 A. Yes. Except for the rules changed in a
16 sense where it was limited to how they could do it.
17 So that was a change in itself.

18 Q. Well, certainly, if it's money they want,
19 it's going to go through family members and not
20 through the prison setting, right?

21 MS. ARMIJO: Objection, vague, as to whose
22 family members.

23 THE COURT: Well, if he can answer the
24 question.

25 Q. Inmates' family members --

1 MR. SINDEL: I'm sorry. I apologize.

2 THE COURT: Overruled.

3 A. What was the question again?

4 Q. If the money was going to go in to an
5 inmate from someone's family members, the inmates'
6 family members, that's the only way they were going
7 to get currency, right?

8 A. Not the only way. Sometimes they'll
9 smuggle money into prisons.

10 Q. How frequent is that?

11 A. Not very.

12 Q. So would you say generally the way that an
13 inmate can get money is to put it on his books so he
14 can spend it at the canteen?

15 A. Or exchange of canteen within the prison.

16 Q. Can you tell me of one of these other sea
17 changes in the rules?

18 A. I believe one of the changes had occurred
19 when different individuals took control of the gang.
20 For example, when Anthony Ray Baca returned back, the
21 violations and the changes in the rules changed,
22 simply because there was a lot of bickering and
23 infighting within the organization. So I believe
24 that we did confiscate some rules and violations that
25 were different than they had before.

1 Q. Let's talk about the rules first. When the
2 rules are confiscated, where are they?

3 A. They're in the possession of STIU.

4 Q. I'm sorry, what?

5 A. They're in the possession of STIU.

6 Q. Have those been, to your knowledge, turned
7 over to the Government to substantiate the allegation
8 that these rules have changed?

9 A. I don't know.

10 Q. Let me ask you this: Somebody goes to the
11 administrator, your immediate supervisor -- I'm
12 sorry, the coordinator, your immediate supervisor?

13 A. Correct.

14 Q. Does he go to you and say: You need to
15 send this stuff, or does someone else have that job?

16 A. He will usually send it.

17 Q. He will usually send it.

18 A. He will usually send it, or he'll designate
19 someone to send it.

20 Q. Okay. So who would he designate?

21 A. I don't know.

22 Q. Has he ever designated you?

23 A. No.

24 Q. Despite the fact that you are the author of
25 some of these memos, right?

1 A. Correct.

2 Q. You probably know the most about them;
3 correct?

4 A. Correct.

5 Q. You know more than Mr. Sapien does;
6 correct?

7 A. I don't know if I know more than Mr.
8 Sapien.

9 Q. You know -- certainly, you know more, as
10 you indicated earlier, you are more qualified than
11 Mr. Cupit, right?

12 A. I don't know if I'm more qualified than Mr.
13 Cupit.

14 Q. Do they have the same jobs you do?

15 A. No, they do not.

16 Q. Are they on the same pay grade, as far as
17 you know?

18 A. No.

19 Q. Are they higher or lower?

20 A. One is higher, one is lower.

21 Q. Who is higher?

22 A. The captain.

23 Q. And who is -- obviously, the one that's
24 left is lower?

25 A. Correct.

1 Q. And you also discussed the database where
2 you can enter things into a computer?

3 A. Correct.

4 Q. Is that simply just entering information
5 that you've already been provided, so it's stored
6 within the memory of the computer? Is that what
7 that's about?

8 A. Well, there is a lot of databases. Which
9 one are you referring to?

10 Q. Well, I'm talking about whatever the
11 computer -- do you use a particular software program?

12 A. To look up an inmate's status, it's by
13 different staff members, and different people have
14 access to, or a limited access to the different
15 areas, depending what their job description is. So
16 it's a Criminal Management Information System.

17 Q. What's the software called?

18 A. I'm not sure, but it's the Department of
19 Corrections software.

20 Q. In making the calculations, does it use any
21 logarithms?

22 A. I'm not particularly -- I wouldn't know.

23 Q. Do you know what a logarithm is?

24 A. No.

25 Q. So at least as far as you know, the

1 computer is used primarily as a storage device?

2 A. Yes, to store information, correct.

3 Q. Do you know what methodologies are used
4 within the Department of Corrections in monitoring
5 the activities of prison gangs?

6 A. I'm not sure I understand the question.

7 Q. Well, do you know what methodology is used
8 within the prison system in monitoring STG
9 activities?

10 A. Do I know what method we use?

11 Q. Methodology. I can't pronounce
12 accreditation, but I can hit methodology?

13 A. I'm not sure what you're asking.

14 Q. Do you know what a methodology is?

15 A. Well, I'm taking it as the method that we
16 use to monitor gang members.

17 Q. Yeah. So what method or methodology do you
18 use?

19 A. What we have is a security threat module.
20 And what we do with that module is we determine how
21 many inmates -- how many different classification of
22 gang members are in a certain prison. What
23 percentage of our certain gang members, or we have --
24 for example, if I wanted to look at the Penitentiary
25 of New Mexico to indicate how many SNM members I had

1 in that prison, that module would let me know how
2 many I have. So, yes, that's what we use as
3 methodology.

4 Q. As I understand it, at least the way that
5 you've explained it, that this module is basically
6 used in order that you can assess how many members in
7 a particular institution may be validated as STG
8 members or disruptive group members?

9 A. Yes.

10 Q. It's math, right?

11 A. Correct.

12 Q. Now, the other day when Ms. Jacks was
13 asking you questions, she asked you whether or not
14 you compiled data on the motivations that are given
15 to you if people wanted to leave the gangs. And you
16 said no?

17 A. That's correct.

18 Q. When an offender comes in for a second
19 go-around, and he is -- was a former member of the
20 SNM, and he says he wants basically out, do you have
21 any place where you keep that information stored?

22 A. If an individual came back into prison and
23 I interviewed him, and he told me that he wanted out,
24 what I would do is write a memorandum to that effect,
25 and turn it over to my boss, which in turn, he would

1 turn it over to the RPP coordinator.

2 Q. Okay. So where, then, does that memorandum
3 finally end up?

4 A. With the RPP coordinator.

5 Q. Who is the RPP coordinator?

6 A. The RPP coordinator would be Captain --
7 give me a moment.

8 Q. He's pretty important, isn't he?

9 A. Jeffrey Medina.

10 Q. How do you spell that last name?

11 M-O-L-I-N-A?

12 A. Medina, M-E-D-I-N-A.

13 Q. So he would be the one that would have the
14 information about people who come back for their
15 second, third, fourth, fifth, sixth go-around, and
16 finally say, I don't want to be an SNM member, right?

17 A. He would have the information that we
18 forward to him that an individual wants to drop out
19 of the gang, yes.

20 Q. Do you keep a copy of that to put in the
21 individual's packet?

22 A. I turn those over to the coordinator, which
23 should go into the packet, correct.

24 Q. Now, you said yesterday you've never
25 removed anything from the packet, right?

1 A. I have never, not me.

2 Q. You would add certain things. Would then
3 the fact that the person that comes back from the
4 streets and says, "I don't want to have anything to
5 do with the SNM," would that be in the packet?

6 A. It should be, yes.

7 Q. And in terms of -- is there any table that
8 you use or any compilation you make of the reasons
9 that these people give for wanting to leave the SNM?

10 A. Yes, it should be within the interview.

11 Q. Do you put it anywhere that's not
12 particularized to the individual?

13 A. I'm not sure I understand what you're
14 saying.

15 Q. In other words, do you say, Look, these are
16 the top 10 reasons people want out of the prison
17 gangs. Do you keep that anywhere?

18 A. No. And that's something, like I was
19 saying before, that Dr. Robinson and I are trying to
20 work on, for the exact reasons that you're saying,
21 because we do not compile those things. And those
22 are very important reasons for being able to be more
23 successful with individuals that enter the RPP
24 Program, to reduce the recidivism of these guys
25 returning back, but also for their success within

1 that program.

2 Q. All right. So you think it's a good idea
3 to keep that data, those statistics, that
4 information, right?

5 A. Correct.

6 Q. Have you gone to the administrator and say,
7 Hey, I've got a great idea?

8 A. Yes, Dr. Robinson and I did.

9 Q. And Dr. Robinson went as well?

10 A. Correct.

11 Q. And they poo-pooed the idea?

12 A. No. They said it was a good idea.

13 Q. Are you doing it?

14 A. We're in the research stage right now.

15 Q. When was it that you went to them and said,
16 I've got this great idea, let's let it percolate for
17 a while?

18 A. Probably about three or four months ago.

19 Q. Now, in the Government Document 1299, it
20 indicates that "failure to conduct SNM business in
21 the community can result in concerns when the SNM
22 member or affiliate or associate returns to prison
23 after having violated the law again." Do you
24 remember that?

25 A. Right.

1 Q. So when you said in that summary that you
2 provided to them that they used to compose the
3 six-page information for the Court, was there any --
4 you said that the gang had members on the outside who
5 could take care of people who weren't doing their
6 jobs, right?

7 A. Are you --

8 Q. Let me rephrase. That was a really lousy
9 question.

10 What you say in that document is that when
11 they go out on the street, basically, they continue
12 with SNM business, including making sure that people
13 do what they're supposed to do?

14 A. Correct.

15 Q. And yet you say that that doesn't happen
16 because the people in prison have to do it, and they
17 have to wait for them to come back in, right?

18 A. I'm not sure what you mean.

19 Q. Well, it says in there that they're
20 concerned about when they return to prison, that they
21 have not done their jobs.

22 A. Yeah, they probably stop associating on the
23 outside.

24 Q. Okay. So the people on the outside
25 apparently haven't had too much control; correct?

1 A. Correct.

2 Q. The people that have provided you with the
3 biographies that have been referred to, do you
4 remember that testimony?

5 A. Correct.

6 Q. Where is that information stored?

7 A. With the RPP coordinator. He has a file on
8 that.

9 Q. The coordinator?

10 A. Correct.

11 Q. And then in terms of when you reviewed that
12 Document 1299, you were identified as the
13 coordinator, right?

14 A. Yes, I was misidentified as the
15 coordinator.

16 Q. You didn't catch that until yesterday,
17 right?

18 A. Correct.

19 Q. You were identified as an expert who has
20 been qualified in court?

21 A. Correct.

22 Q. And you didn't catch that till today?

23 A. Correct.

24 Q. So when you reviewed it, I guess it wasn't
25 a detailed, cautious, and careful review?

1 A. That's correct, sir.

2 Q. That's six pages, that's a lot to read,
3 isn't it?

4 A. It is.

5 Q. And the people you have used in order to
6 formulate many of the opinions that you discussed,
7 and you may discuss if you're allowed to testify in
8 front of a jury, that information primarily comes
9 from interviews?

10 A. Primarily, yes.

11 Q. And the people you interviewed could also
12 come into this courtroom and tell this Court and any
13 jury that's assembled the same thing that you heard?

14 A. I don't know.

15 Q. Well, if they tell what they told you, it
16 would be the same thing, right?

17 A. If they tell what they told me, yes.

18 Q. So you don't have to necessarily be the
19 conduit to provide that information to the Court.
20 They can go right to the source?

21 A. I don't know.

22 Q. They can, or can't?

23 A. I don't know.

24 Q. Well, if this person is still alive, they
25 could ask them to come in to court and testify,

1 right?

2 A. They could.

3 Q. They could use the power of subpoena to
4 bring them in, as far as you know?

5 A. As far as you know, yes.

6 Q. Pretty hard to get away from the federal
7 government if they're chasing you, right?

8 A. I don't know.

9 MR. SINDEL: I believe that's all I have,
10 Your Honor.

11 THE COURT: Thank you, Mr. Sindel.

12 MR. SINDEL: Thank you, sir.

13 THE COURT: All right. Any other
14 defendants?

15 Mr. Adams?

16 EXAMINATION

17 BY MR. ADAMS:

18 Q. So you had talked with Ms. Jacks about
19 there being no known error rate when you identify
20 somebody as an SNM member or gang member; correct?

21 A. I'm sorry, I don't understand the question.

22 Q. That, as far as you knew, there was nobody
23 who kept up with whether people were properly
24 validated or not properly validated as SNM members,
25 or any other gang member in the Department of

1 Corrections; correct?

2 A. I'm trying to -- I guess I'm not
3 understanding what you're asking.

4 Q. Okay. I'm asking about error rates.

5 A. Oh, error rates.

6 Q. Whether you had error rates, whether you
7 know what those are?

8 A. I don't know what the error rates are.

9 Q. You don't know what your own error rates
10 are, much less, the error rates of any of your
11 coworkers who classify other inmates?

12 A. Well, when they classify them, they have to
13 go -- if they're suspected, it still has to be
14 approved by the unit coordinator, STIU unit
15 coordinator. If they're validated, it still has to
16 be approved. And the only one that can approve it is
17 the administrator or someone higher.

18 Q. My question is about error rates. Do you
19 know if any of those people keep up with how often
20 they get it right versus how often they get it wrong?

21 A. We do audits on their files. So I don't
22 know.

23 Q. What's an audit on a file?

24 A. Well, the coordinator usually does the
25 audits. And he'll determine whether there is enough

1 information there, or if the information is not valid
2 to be in the file, so -- and to make sure that he has
3 the file and everything is accurate in it.

4 Q. Okay. Well, how would he determine if
5 everything is accurate in it?

6 A. He'll go through it.

7 Q. So he reads through one of these letters,
8 like in Mr. Baca's STIU file. And how would he know
9 if that's accurate or not?

10 A. Well, he has a checklist that tells him,
11 for example, everything that should be in there. And
12 once he goes through that audit, if everything is not
13 in there, his job should be to eliminate that -- the
14 point, and find out where it's at.

15 Q. So what you're talking about is whether or
16 not the file is complete?

17 A. Correct.

18 Q. All right. So who goes through and figures
19 out every four years, every 10 years, whether
20 somebody is actually an SNM member who is living in
21 an SNM pod?

22 A. I believe that every time an individual
23 comes into a unit, and he's classified as an SNM
24 member and he's brought to us, we interview him, and
25 we check documentation to make sure he is currently

1 documented.

2 Q. Okay. And so if somebody answers no
3 questions -- like I think you said Mr. Billy Garcia,
4 you tried to interview him, and he answered none of
5 your questions?

6 A. Correct.

7 Q. So how would you know -- I'm sorry, Billy,
8 to use you as an example -- how would you know
9 whether Billy Garcia was an active SNM member or a
10 retired SNM member, or never an SNM member, who
11 happened to get called an SNM member by an informant
12 of some sort?

13 MS. ARMIJO: Objection, compound.

14 THE COURT: Overruled.

15 A. He would -- within the interview he would
16 tell me if he's no longer an SNM member.

17 Q. If he talked to you?

18 A. Correct.

19 Q. He might tell you that he was no longer an
20 SNM member because he didn't do any work on the
21 outside?

22 A. Correct.

23 Q. And so don't send me back into those
24 restrictive conditions, because I've had a falling
25 out with those guys because I've retired?

1 A. Correct.

2 Q. And then you send him back in because he'd
3 previously been validated?

4 A. Correct.

5 Q. All right. So what if somebody doesn't
6 talk to you and tell you anything?

7 A. It's up to the coordinator to say, okay, we
8 need to find out who is still active and who is still
9 not active. If they're in the same unit -- let's
10 say, for example, we conduct random interviews of the
11 SNM unit. It's their opportunity to tell us if
12 they're not active or they are inactive. Or if we've
13 seen that they're no longer associating with
14 active -- or they're no longer associating, then we
15 write the documentation on that. And again, it would
16 be up to the administrator or the coordinator to make
17 that decision, I think, if that's the way I
18 understood your question.

19 Q. Well, I'm trying to get to error rates.
20 But I'm going to stay with what you mentioned, and
21 we'll come back to error rates.

22 So, if somebody -- one thing you look at is
23 whether somebody is active or inactive as an SNM Gang
24 member?

25 A. Correct.

1 Q. All right. But everybody who has ever been
2 called an SNM Gang member, rightly or wrongly, is
3 housed together in a pod, right?

4 A. Correct.

5 Q. For security reasons; correct?

6 A. Correct.

7 Q. In a restricted pod, some Level 5, or Level
8 6?

9 A. Yeah, it's -- yeah, I guess you could say
10 it's a restricted pod.

11 Q. And it's only suspected SNM members who are
12 in the pod. There are no other people who aren't
13 thought to be SNM members living in with the SNM
14 guys?

15 A. Correct.

16 Q. All right. So how is somebody going to
17 show that they're an inactive member, if all day,
18 every day, the only people they're around are guards
19 and SNM members, or thought to be -- suspected SNM
20 members? How is any guard going to pass information
21 along to you saying, like, Hey, I think this guy is
22 inactive?

23 A. Right. And if that were to happen, then I
24 would interview the individuals in the pod, the other
25 SNM members, who would tell you that they're not a

1 member.

2 Q. Okay. And then what happens?

3 A. Then we remove them.

4 Q. How often has that happened over the last
5 five years?

6 A. I'm not sure.

7 Q. Can you think of one time that that's
8 happened over the last five years?

9 A. Yes.

10 Q. Okay. Who?

11 A. An individual by the name of Arturo Torrez.

12 Q. Arturo Torrez. When?

13 A. I think maybe within the last couple of
14 years.

15 Q. Who else?

16 A. I believe another individual by the name
17 of -- I can't remember his name. I know there has
18 been a couple.

19 Q. All right. And the thought was those guys
20 did not appear to be interacting with any of the
21 other SNM members in the pod?

22 A. They were interacting -- they just weren't
23 part of SNM group.

24 Q. So did they go through the RPP Program to
25 be able to get out of the restricted environment?

1 A. No.

2 Q. All right. They were just removed because
3 you guys thought maybe you had gotten it wrong?

4 A. No, because we interviewed, and did an
5 investigation, and came to the conclusion that they
6 were not.

7 Q. Okay. Well, were they -- had they ever
8 been? Do you believe the initial determination that
9 they were validated was accurate?

10 A. Yes. In the case of Arturo Torrez, yes, he
11 was an active member.

12 Q. When?

13 A. When was he an active member?

14 Q. Yes.

15 A. In the '90s.

16 Q. Then did he get out of the DOC and then
17 come back in to the DOC, and was placed back into the
18 SNM unit?

19 A. Correct.

20 Q. And somebody raised it to your attention
21 that, Hey, he may not be an active member anymore,
22 because he's not interacting with the fellow?

23 A. He did.

24 Q. He sent you a letter?

25 A. He sent someone a letter.

1 Q. So do you view that as an error in
2 classifying him when he came back into the Department
3 of Corrections?

4 A. No.

5 Q. Why not?

6 A. Because he was still documented as an
7 active member.

8 Q. So my question is why do you believe the
9 document is correct if he, in fact, was not an active
10 SNM member, but you guys labeled him as one based on
11 historical documents?

12 A. I wouldn't have known until we did an
13 investigation.

14 Q. So you -- just to be fair, you just relied
15 on whatever was in the old report when he came back
16 in?

17 A. Correct. So when he came back in, and then
18 he went through the RDC process, he mentioned nothing
19 about not being an active member. He actually stated
20 that he was still a member of the SNM. So under
21 those circumstances, he was put back into the SNM
22 unit. After that, he had written a letter stating
23 that he was no longer an active member, and did not
24 want to participate or be in the same unit as active
25 members.

1 Q. Okay. And he didn't have to go through the
2 renouncing or restoration program?

3 A. Correct. His was basically a protective
4 custody issue.

5 Q. So getting back to the example -- and I'll
6 make up facts, so I'm not talking about Billy
7 Garcia's case, but using Billy Garcia as an example.

8 A. All right.

9 Q. Let's say somebody had been in the DOC in
10 the '90s.

11 A. Um-hum.

12 Q. They may or may not have been an SNM
13 member, but the paperwork said they were an SNM
14 member. Okay? And then they parole out and they go
15 home?

16 A. Correct.

17 Q. And they come back into prison, and you
18 have no idea what's happened to them in the decade
19 they've been out?

20 A. Right. That's why we have an initial
21 interview when they come into the Reception and
22 Diagnostic Center.

23 Q. All right. And what happens if that person
24 comes in and says, "I'm not a gang member anymore. I
25 Christianed out?

1 A. Then we'll segregate them from the rest of
2 the unit. If he no longer wants to be within the
3 active unit of the SNM, we'll segregate him out, and
4 give him a chance to debrief or go into an RPP
5 Program.

6 Q. Okay. Well, but the RPP Program is for
7 active SNM members who are renouncing. We're talking
8 about somebody who is coming back into the DOC, who
9 is no longer a member.

10 A. What do you mean by active?

11 Q. Well, you're using the word "active."

12 A. Well, as long as they're SNM, and it's
13 classified as SNM until they debrief, they're not
14 active anymore.

15 Q. Okay. So that circles back to my questions
16 about error rate. Once somebody has been called SNM
17 by your team, they're always going to be viewed as
18 SNM, unless something extraordinary happens?

19 A. Unless they denounce, yes.

20 Q. Unless they denounce.

21 So if somebody was wrongfully classified,
22 they're going to remain wrongly classified their
23 entire life, and you guys don't have any programs to
24 evaluate that to see if you got it right back in '94
25 or '96, when somebody was first labeled, right?

1 A. Correct, I guess.

2 Q. Any chance we can get you to take the "I
3 guess" off that? Is this a correct statement or
4 question to you, or not?

5 A. I guess I could explain it this way. If an
6 individual has been wrongly classified as an SNM
7 member, we will get requests from them that they are
8 not an SNM member. And once we get the request, we
9 will look into it, and we'll do an investigation to
10 prove yes or no.

11 Q. So you may allow them the opportunity to go
12 into the RPP Program to get out of the SNM unit?

13 A. No. If there is evidence that they're not
14 an SNM member, of course, then they're not an SNM
15 member, and we remove them.

16 Q. All right. And has that ever happened?

17 A. I'm sure it has.

18 Q. When? How many times and who?

19 A. One person that I know of was an individual
20 by the name of Anthony. I can't remember his last
21 name. Give me a second. I remember the moniker
22 Kujo. Anthony -- I'm sorry, I can't remember the
23 last name.

24 Q. Okay. So Kujo. Anthony "Kujo," last name
25 unknown, you believe had been falsely diagnostically

1 validated as an SNM member?

2 A. Not me. I didn't take it off of him. I
3 just know of that person.

4 Q. But you believe he had been placed in the
5 SNM unit falsely; that he had been improperly
6 validated as an SNM member sometime prior by somebody
7 in the STIU?

8 A. That's what the conclusion had come to by
9 the administration, yes.

10 Q. And that was because he self-reported that
11 to you?

12 A. He must have self-reported that to -- to
13 the STIU, yes.

14 Q. And if he had been of the philosophy,
15 Mr. nickname Kujo, if Mr. Kujo had been of the
16 philosophy that: I don't write prison guards
17 letters, period, because that doesn't help me live my
18 life here in the prison, so I don't communicate with
19 prison guards. I'm certainly not going to complain
20 to prison guards about how I'm housed, then you guys
21 would have never known that he had been wrongly
22 placed in the SNM unit and wrongly labeled an SNM
23 member?

24 A. If you file a habeas, that's another way.

25 Q. So if he pursued it through the courts or

1 pursued it internally, maybe you would learn of the
2 initial error?

3 A. If it was an error, yes.

4 Q. Well, you're assuming it was an error that
5 he was in the unit?

6 A. They cleared him of it, yes. My
7 understanding, he came back later, and was
8 reclassified as an SNM member.

9 Q. Okay, I'm going to leave that one alone.
10 Let me go on to this thing. You said
11 yesterday that your understanding of SNM, it was
12 blood-in-and-blood-out?

13 A. Correct. That's the way their motto was
14 when they first originated.

15 Q. Did that mean you had to do an act of
16 violence to get into the gang?

17 A. Correct.

18 Q. And if you wanted to get out of the gang,
19 that means you leave in a casket?

20 A. Correct.

21 Q. So there is no way to retire?

22 A. There was no way to retire.

23 Q. But then you talked about -- with
24 somebody -- you talked about the Old Timers. And
25 what the Old Timers mean is that it was somebody who

1 could just retire from the SNM?

2 A. Correct.

3 Q. So there are people who retire without
4 blood out?

5 A. It appears that way, yes.

6 Q. And you believe that's correct?

7 A. Yes.

8 Q. And you also talked about that some people
9 become -- have religious conversions, and they
10 withdraw from the SNM Gang?

11 A. Correct.

12 Q. And that that is permitted under the
13 current rules that have been in place for the last 20
14 years for SNM?

15 A. That's how I understand it, yes.

16 Q. And you understand that from your
17 interviews with inmates?

18 A. Correct.

19 Q. And that other people are allowed to
20 withdraw for whatever personal life reasons they
21 need?

22 A. Right. I mean, the older guys, they're not
23 expected to put in work anymore, and they've done
24 their part. So they're no longer -- they're no
25 longer expected to comply with any of the rules.

1 Q. And yet, if they don't go through the RPP
2 Program, they remain a validated SNM member; correct?

3 A. Correct.

4 Q. And they would live in that pod surrounded
5 by SNM members, right?

6 A. Correct.

7 Q. Where they would only have the opportunity
8 on picture day to be photographed with SNM members;
9 correct?

10 A. Before they were segregated into that unit,
11 yes.

12 Q. All right. And their whole life would
13 be -- in the prison, would be surrounded by other SNM
14 members; correct?

15 A. Correct.

16 We have another population that's called
17 the Special Management Population. We have SNM
18 members in there that are no longer, for whatever
19 reason, they're no good, but they don't want to go to
20 the RPP Program. But they cannot associate with
21 active members of the SNM for whatever -- green light
22 issues, whatever. So they've been put into a
23 different setting, population setting as well,
24 without going to the RPP. So there is an alternative
25 as well.

1 Q. All right. Put people in protective
2 custody?

3 A. We don't like to call it "protective
4 custody." We just call it a different type of
5 population.

6 Q. But is it tantamount to being in protective
7 custody?

8 A. Yes.

9 Q. You might put them in there if you think
10 they're in danger?

11 A. It's with a different population setting,
12 yes.

13 Q. All right. Well, let me back up to my
14 example. So we've got people who could have been in
15 prison earlier, who had been validated as an SNM
16 member, rightly or wrongly, and they may have tattoos
17 that are viewed as SNM-related tattoos by different
18 members of the STIU; correct?

19 A. Correct.

20 Q. And then they could get out on the street,
21 away from the gang, and withdraw from SNM membership
22 through either a religious conversion or in other
23 ways withdraw from membership?

24 A. Correct.

25 Q. All right. And then they could come back

1 into the prison. And unless they tell you they'll go
2 through RPP, or unless they tell you they're no
3 longer a member, they get revalidated because their
4 prior paperwork said they were validated, right?

5 A. They remain validated.

6 Q. They remain validated. And you guys have
7 no idea about they've withdrawn from the gang for 10
8 years?

9 A. Usually they'll tell you.

10 Q. If they tell you, then what happens?

11 A. If they tell us, then we'll -- if they feel
12 that they would be in danger if returned into that
13 SNM population setting, we would remove them.

14 Q. Okay. Over to that unit where people are
15 locked down all the time?

16 A. No, they're not locked down. It's a
17 population setting.

18 Q. So they could go into that unit, or they
19 could go back into the SNM unit, or they could go to
20 RPP, if they'd been previously validated?

21 A. Correct.

22 Q. So you would have -- so assume with me for
23 a second, the situation where somebody leaves; they
24 withdraw, retire from the gang, for whatever -- old
25 age, religion, mama made them promise they'd

1 withdraw, whatever the reason -- they come back into
2 prison, and they don't have a conversation with you.
3 They go back into the SNM unit, don't they, as a
4 validated member?

5 A. As part of the process they'll always have
6 a conversation with us.

7 Q. They don't have to answer your questions?

8 A. Correct.

9 Q. And if they don't answer your questions,
10 what happens?

11 A. They go back to the SNM. Or if they're
12 validated, they'll return back to the validation.

13 Q. Right. So once somebody is there, they
14 could be in the unit, and in that circumstance
15 they're not an active SNM member, but they're still
16 going to be in the unit and be as a validated member
17 by you and your team; correct?

18 A. They're considered active.

19 Q. Right, you consider them active?

20 A. Correct.

21 Q. And so if that's an error, you're not
22 looking to find out whether that's an error or not?
23 Unless they prove to you by whatever level of proof
24 is needed that they're no longer a member, they are
25 going to be treated like they're a member, just based

1 on prior paperwork?

2 A. If they were out in the streets, and they
3 were on probation and parole, probation and parole
4 would keep offender notes on them, offender reports.
5 And we have access to those as well, so we would
6 review those.

7 If there is no indication in there that
8 this individual has ever stated that he's no longer a
9 member or he's no longer a member in good standing,
10 unless he tells us, and there is basically no reason
11 why they wouldn't tell us that they're no longer
12 active or a good member in standing with the SNM,
13 yeah, you're right, I wouldn't know.

14 Q. And you're certain -- in your experience
15 you're certainly aware that there are a lot of
16 inmates that just aren't going to talk to the guards,
17 period?

18 A. Not too many.

19 Q. Not too many? That's just Hollywood myth?

20 A. Correct.

21 Q. I'd like to ask you a couple of questions
22 about the doing work out on the street or doing
23 missions on the street once SNM members are paroled
24 out and they go home. You had mentioned that
25 earlier, and I wanted to follow-up with a couple more

1 questions.

2 Is your source of information about that
3 simply your interviews with inmates when they return
4 to the DOC?

5 A. Yes, interviews with inmates that have
6 returned back, and have stated this, or individuals
7 that have been debriefed, that were active members of
8 the SNM.

9 Q. Who are going through the RPP Program?

10 A. Correct.

11 Q. And that's -- your full understanding of
12 what's happened on the street is based on what you
13 just said: The RPP debriefings and inmates returning
14 to the DOC who are choosing to talk with you?

15 A. I also believe that there are active
16 members that I've spoken to that have told me the
17 same.

18 Q. I'd like to ask you a couple of questions
19 about your seminar presentations. Do you know how
20 many seminar presentations you've given?

21 A. More than 10.

22 Q. I'm going to ask you where? The first one,
23 where was it? What was the title?

24 A. The first one was with the New Mexico Gang
25 Task Force. The title was "Prison Gangs."

1 Q. When was it?

2 A. It may have been, maybe 2012.

3 Q. Did you prepare materials for that
4 presentation?

5 A. Yes.

6 Q. How long was the presentation?

7 A. Four hours.

8 Q. Was it you presenting by yourself for four
9 hours?

10 A. No.

11 Q. How long was your part of the presentation?

12 A. I was the primary presenter. So I don't
13 have primarily a part; would just interject when I'm
14 speaking. The individual that's with me can
15 interject at any time.

16 Q. All right. And what were the materials?

17 A. The materials were slide shows.

18 Q. Do you still have the slides?

19 A. That particular one, I don't know.

20 Q. How could we get those slides from you, if
21 you have them?

22 MS. ARMIJO: Objection, Your Honor. That
23 might be law enforcement sensitive.

24 THE COURT: Why don't y'all talk about it
25 on the break. I think we need to take an afternoon

1 break. So we'll be in recess for about 15 minutes.
2 And if there is an issue there, we'll take it up at
3 the appropriate time. All right.

4 (The Court stood in recess.)

5 THE COURT: Let's see if we got
6 everybody. All right. I think we've got everybody.
7 Looks like we've got enough counsel for everybody.

8 Let me take up a matter. I've been talking
9 to Ms. Wild, who has been in communication with both
10 Ms. Armijo and Ms. Bhalla about your second counsel.
11 And I'm inclined to give you a second counsel. But
12 I'm getting a little frustrated that you're wanting
13 to delay it. So I'm putting this on the record,
14 because I don't want you to use the fact that you
15 don't have a second counsel as a delay to, you know,
16 delay the trial, or something like that.

17 So 10:00 tomorrow morning let Ms. Wild know
18 who you want. And work it out. Because I've been
19 telling y'all you need to get your house in order.
20 And I'm putting on the record that you're the one
21 delaying it. Okay.

22 MS. BHALLA: Yes, Your Honor. And I
23 actually have been working on it. And I think that
24 we have found somebody. And I've communicated with
25 Ms. Waters and with Ms. Wild about that.

1 THE COURT: 10:00 o'clock tomorrow morning
2 you let us know. Otherwise, I'm appointing somebody.
3 Okay?

4 MS. BHALLA: Yes, Your Honor.

5 THE COURT: Because I don't want you to be
6 delaying it. There is nothing on the record. So now
7 it's on the record that you're the one that's
8 delaying it. I'm ready to appoint somebody. And so
9 let us know. Otherwise, at 10:00 tomorrow, I'm going
10 to do my own thing.

11 MS. BHALLA: Yes, Your Honor.

12 THE COURT: All right. Mr. Martin, I'll
13 remind you that you're still under oath.

14 Mr. Adams, if you wish to continue your
15 cross-examination of Mr. Martin, you may do so.

16 MR. ADAMS: Thank you, Your Honor.

17 Q. So I'm going to return back to this list of
18 presentations you've done. And we were at number
19 one. And you were saying you were unsure if you
20 could provide us your materials or not.

21 A. Correct.

22 Q. How do you find that out?

23 A. I would have to talk to the STIU
24 administrator to see if that's permissible or not.

25 Q. When can we follow-up with you? Because we

1 really need those before you testify, and we didn't
2 get them. So when can we circle back with you to see
3 if we can get those materials, or whether we need the
4 file something with the court? I mean, is Friday
5 enough time? Two days?

6 A. Yeah, I suppose.

7 Q. Will you be at your regular office on
8 Friday?

9 A. Correct.

10 Q. So number one was a presentation on gangs
11 in 2012.

12 What was presentation number two?

13 A. All the presentations have been pretty
14 similar. They're all on prison gangs.

15 Q. All right. So all on New Mexico prison
16 gangs?

17 A. Correct.

18 Q. Who were the different audiences? Has it
19 all been Department of Corrections' employees?

20 A. No. New Mexico Gang Force is open to law
21 enforcement.

22 Q. So those materials would not be protected
23 under the DOC, because that's an outside group;
24 correct?

25 A. That's law enforcement sensitive. I don't

1 know. It's still their property.

2 Q. All right. And has that PowerPoint changed
3 over time, or this one basic PowerPoint that you've
4 used in all ten of your presentations?

5 A. No, it's changed.

6 Q. All right. So that number two -- do you
7 remember the ten presentations that you've given?

8 A. I don't. Some of them have been the same.
9 I've used the same presentation maybe three or four
10 times.

11 Q. All right. What are the -- so you've done
12 a gang -- prison gang talk that you worked on as
13 number one for 2012, and you've used that three or
14 four times?

15 A. On the same topic.

16 Q. What are your other topics?

17 A. It's been the same topics.

18 Q. So prison gangs in New Mexico?

19 A. Yes.

20 Q. Have you ever included materials on SNM?

21 A. Yes.

22 Q. How many times?

23 A. Every time.

24 Q. Every time. And is it fair for me to
25 assume this was not exclusively SNM, but it was all

1 the different identified gangs in the DOC?

2 A. Correct.

3 Q. And yesterday with Ms. Jacks you indicated
4 that you sometimes go get information from the
5 internet. I believe you said informational on
6 cultures and gangs from law enforcement websites.

7 A. Yes.

8 Q. How does that assist you?

9 A. Just to see the commonalities within the
10 prison gangs around the country.

11 Q. All right. And so you do that as part of
12 your job?

13 A. No.

14 Q. Just part of an interest that you have?

15 A. Correct.

16 Q. And you said that you went on a site named
17 Code 10 or Code 1.

18 A. Something like that. I don't remember.

19 Q. And what do you look for when you're on
20 that site?

21 A. I think that site, in particular, talks
22 about things that are going on in different prisons.
23 The other sites that I go to are -- would be
24 classified under prison gangs.

25 Q. What sites?

1 A. I don't remember. This has been a while
2 since I've done this.

3 Q. How often do you go on to Code 10 or Code
4 1?

5 A. I probably haven't done it in a couple of
6 years.

7 Q. Okay. So this is not something that you
8 are using material from there as a part of your
9 purported expert opinion in this case?

10 A. No.

11 Q. All right. I looked for a website called
12 Code 10 or Code 1, and could not find one.

13 A. I'm not sure. I thought that was the name.

14 Q. I did find this thing called Corrections 1.

15 A. Maybe that's the one. It might be that
16 one.

17 Q. It has this photograph. And I just
18 couldn't resist showing it to you. Does this look
19 like the website you referenced?

20 A. Yes.

21 Q. How does that help you with prison gangs?

22 And for what it's worth is
23 www.corrections1.com. And there is a very
24 frightening guy's picture there on the home page with
25 a skull tattooed on his face.

1 A. I used that for information about security
2 threat issues that they're having in different
3 prisons.

4 Q. You just looked to see whatever the news
5 articles are that are linked there?

6 A. Correct.

7 Q. Okay. So this is not some sort of insider
8 baseball type of website? This is just a law
9 enforcement website that links to media articles?

10 A. Correct.

11 Q. Are there any other websites that you rely
12 on as part of the bases of your purported expert
13 opinions?

14 A. No. I use them as information.

15 Q. Have you been retained by the Government in
16 this case?

17 A. Are they paying me? Is that what you're
18 asking me?

19 Q. Well, I will ask you that. But let me ask
20 you this first: Do you have a retainer agreement?
21 Have you a signed document with them?

22 A. No.

23 Q. To be an expert for them?

24 A. No.

25 Q. All right. Are you getting paid?

1 A. No.

2 Q. When were you contacted about assisting the
3 Government in this prosecution?

4 A. I believe it was a collaboration of all
5 STIU staff, when they first started to collect
6 information on indictments. So it was -- at that
7 time I was part of a lot of other STIU officers that
8 were asked to meet -- to meet in -- I believe, it was
9 in Albuquerque -- to talk about the collection of
10 documentation.

11 Q. This would be in late 2015?

12 A. Correct.

13 Q. Would this have been right after the main
14 arrests in this case, or before that?

15 A. It may have been before.

16 Q. I believe the arrests or most of the
17 arrests occurred on, I believe, December 3, 2015.

18 A. It was before.

19 Q. So you were part of a meeting with other
20 STIU officers?

21 A. Yeah, administrators and the FBI, yes.

22 Q. And were you asked at that time if you
23 would offer expert assistance?

24 A. No.

25 Q. When were you asked if you would offer

1 expert assistance?

2 A. I don't remember, to be honest. Probably
3 six months or a year ago. Six months maybe.

4 Q. When were you provided a copy of the expert
5 disclosure that Ms. Jacks went over with you
6 basically line by line? When were you given that
7 document?

8 A. I've seen that document, I believe, on
9 Monday.

10 Q. And that was prepared for you; you didn't
11 write that?

12 A. I didn't write that, no.

13 Q. Were you interviewed about that? At some
14 point, did you have a conversation where you gave
15 your thoughts and ideas and it was put in writing?

16 A. The only time that that happened was when I
17 provided my qualifications.

18 Q. So your resume that's been marked as
19 Government's Exhibit 17?

20 A. Correct. We might have had a verbal
21 discussion about it. But I don't recall.

22 Q. And I'd like to ask you a little bit about
23 the information about the historical part of SNM.
24 You went over with the other lawyers that part of
25 your opinions are on the formation of SNM, as far

1 back as the 1980s, when you weren't working for the
2 DOC?

3 A. Correct.

4 Q. And you said that you learned that from
5 veteran officers; learned about that history from
6 veteran officers, and then confirmed it with
7 interviews of inmates?

8 A. I learned about the SNM through veteran
9 officers. I learned about the history of the SNM
10 through individuals that were actively at the time a
11 part of the SNM.

12 Q. What veteran officers educated you about
13 the SNM, or shaped part of your views about the SNM?

14 A. That was about 20 years ago. I don't know.

15 Q. So is the answer you don't remember?

16 A. I don't remember.

17 Q. Okay. You had talked a little bit about
18 this FBI Task Force, which is listed on your resume.
19 Were you ever officially a member of the task
20 force -- of a federal task force?

21 A. I don't know if I would call it official.
22 I'm not sure how that would work. All I know is that
23 I would assist. For example, overtime or whatever
24 was paid, any overtime incurred by me was paid by the
25 federal government to the State of New Mexico.

1 Q. Was there ever a memo of understanding done
2 by the federal government, law enforcement agencies,
3 and your employer, about them using your time and
4 then getting flow-through payments to you, to your
5 knowledge?

6 A. Yes, I believe there was.

7 Q. Do you think there was a memo of
8 understanding?

9 A. I believe there was something in writing,
10 yes. But I don't know what it is.

11 Q. Did you receive any type of credentials or
12 identifications that would identify you as a task
13 force officer?

14 A. No.

15 Q. When do you think this memorandum of
16 understanding may have been executed?

17 A. I believe this was executed when we were
18 working with the California Surenos, probably in
19 2014, 2015.

20 Q. And are you not sure if that would still be
21 in effect today?

22 A. I'm not sure.

23 Q. Did you ever change offices to move from
24 wherever you were doing your work to some task force
25 office facility?

1 A. No, sir.

2 Q. Have you ever interviewed Chris Garcia?

3 A. No, I have never interviewed Chris Garcia.

4 Q. Have you ever observed Chris Garcia?

5 A. No.

6 Q. Have you ever reviewed Chris Garcia's STIU
7 file?

8 A. No, I have not.

9 Q. Have you ever reviewed any pictures about
10 his tattoos?

11 A. No, I have not.

12 Q. Ever reviewed his classification scores?

13 A. No.

14 Q. So you'd have no opinion at all about Chris
15 Garcia, whether or not he's an SNM member?

16 A. At this point, no.

17 MR. ADAMS: Thank you.

18 THE COURT: Thank you, Mr. Adams.

19 Any other defendants that want to
20 cross-examine?

21 Mr. Villa?

22 MR. VILLA: I'm sorry, Your Honor. I know
23 you were hopeful.

24 THE COURT: I don't hope for anything.

25 Just stay steady. Don't hope for anything.

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EXAMINATION

BY MR. VILLA:

Q. Good afternoon, Mr. Martin.

A. Good afternoon.

Q. I'll try to be brief. I'm just going to kind of jump around.

You mentioned the STIU Coordinator Adam Vigil, that's your direct supervisor?

A. He was, yes.

Q. He's no longer?

A. No.

Q. That's while you were still at STIU?

A. Correct.

Q. Mr. Vigil is still at STIU?

A. Correct.

Q. This is the same Adam Vigil that worked at Southern New Mexico?

A. No.

Q. Was there a different Adam Vigil that worked at the Southern New Mexico Correctional Facility?

A. I don't know any Adam Vigil that's ever worked at Southern Correctional Facility.

Q. Do you happen to know Mr. Vigil's position prior to him becoming the STIU coordinator?

1 A. I believe he retired as a major at the
2 Penitentiary of New Mexico, and he came back as the
3 STIU coordinator.

4 Q. You testified I believe on your direct
5 about the different levels of classification, Level 6
6 being the highest?

7 A. Correct, sir.

8 Q. And if I understand it correctly, somebody
9 who is a member of an STG, like SNM, they're not
10 necessarily placed in Level 6; correct?

11 A. Level 6 is used as a disciplinary, behavior
12 modification. If an -- so SNM members can be placed
13 in Level 6, correct.

14 Q. If they have some sort of disciplinary
15 issue?

16 A. Correct. That's what Level 6 is used for.

17 Q. Just because they're SNM doesn't mean they
18 go there?

19 A. Correct. Any inmate that is deemed a
20 threat or is serving disciplinary sanctions will end
21 up at the Level 6.

22 Q. Some SNM members are kept in the same pod
23 together; correct?

24 A. In Level 6, is that what you're saying?

25 Q. No, not on Level 6. Just in general.

1 A. In a Level 4 setting, yes.

2 Q. So SNM members who aren't doing some sort
3 of discipline or other corrective action that's being
4 taken against them, can be housed in a Level 4
5 setting with other SNM members; true?

6 A. Correct. In a congregate setting, yes.

7 Q. So if an SNM member is in Level 4, in that
8 setting, to get themselves put into Level 6, they've
9 got to have some sort of disciplinary infraction?

10 A. Yes, they would have to -- misconduct
11 report would have been written on them, and they
12 would have been placed in segregation, yes.

13 Q. And do you know how long they can be placed
14 in segregation?

15 A. Depends on the severity of the infraction.

16 Q. Is there some process by which that
17 determination is made?

18 A. Yes, a hearing officer determines. We have
19 a criteria in Corrections. And depending on what the
20 severity of that is, there is a minor misconducts,
21 and then major misconduct reports. But they have to
22 be found guilty, of course, of misconducts.

23 Q. Does someone in STIU play any role in those
24 determinations that -- whether they're found guilty
25 of misconduct, and how long the period of time they

1 should be in discipline is?

2 A. No.

3 Q. It's just done by the hearing officer?

4 A. Correct.

5 Q. Same process that someone who is not in SNM
6 or STG would go through?

7 A. Correct.

8 Q. Is Level 6 used for anything else besides
9 discipline?

10 A. It used to be used for protective custody
11 inmates as well. But we've changed that process. So
12 at this point at the Penitentiary of New Mexico, it's
13 primarily used as a disciplinary unit.

14 Q. When did the process change?

15 A. I believe it changed about a year ago.

16 Q. 2016?

17 A. Maybe less. I'm not sure. But I know it
18 did change.

19 Q. And when you say "protective custody,"
20 you're talking about somebody who has a threat to
21 their safety, their life?

22 A. Right. I'm not saying that we don't hold
23 individuals that have protective custody issues in
24 there as well. I guess I should have clarified that.
25 Because it's primarily used for individuals that are

1 in segregation, but there is occasion where we would
2 put individuals in there for protective custody
3 issues until we reclassify them somewhere else to a
4 different prison.

5 Q. So, for instance, somebody who has a green
6 light or a hit out on them from an STG, like SNM,
7 might be placed in protective custody until you can
8 reclassify them?

9 A. Correct.

10 Q. Or anybody else whose life might be in
11 danger?

12 A. Right.

13 Q. So aside from protective custody and
14 discipline, is Level 6 used for any other reason?

15 A. Not to my knowledge. I'm not understanding
16 what you mean.

17 Q. I mean, is somebody placed into Level 6
18 classification for some other reason besides
19 discipline or protective custody?

20 A. We have federal holding in there at times
21 as well.

22 Q. Inmates who are being held there pending a
23 federal trial?

24 A. Right. Or a county might not be able to
25 keep the inmates. Or there might be a security

1 threat issue with a county inmate, and they'll
2 contract him to us.

3 Q. Somebody who is in danger in the county
4 jail, they're placed in Level 6 pending their trial?

5 A. Yes. Those are some of the reasons, yes.

6 Q. Any other reason somebody can be placed in
7 Level 6?

8 A. I'm not sure.

9 Q. Not that you're aware of?

10 A. Not that I'm aware of, correct.

11 Q. Are you familiar with the housing of
12 members believed to be SNM or are SNM at the Southern
13 New Mexico Correctional Facility in 2014?

14 A. Yes.

15 Q. Were you in the STIU at that time?

16 A. Yes, I was.

17 Q. Did you make decisions or have input on how
18 SNM members were housed?

19 A. I do not have -- I did not have input on
20 how they were housed or where they were housed, no.

21 Q. Were you involved at Southern New Mexico
22 when Javier Molina was murdered, March 7, 2014,
23 allegedly murdered?

24 A. I was working at the Penitentiary of New
25 Mexico.

1 Q. At PNM?

2 A. Yes.

3 Q. Did you come down and participate in the
4 investigation in any way?

5 A. No.

6 Q. Were you asked to consult and provide any
7 opinions about the homicide?

8 A. I was not.

9 Q. And you didn't conduct any of the
10 investigatory interviews that took place in
11 connection with that homicide?

12 A. Well, let me back up a minute. When that
13 homicide did happen, the SNM members that we did have
14 at the Penitentiary of New Mexico, I believe we did
15 interview those individuals that were there, the STIU
16 unit did interview the individuals that were there,
17 in order to try to get information on the reason or
18 the motive.

19 Q. Did you personally interview anyone or
20 attend an interview of anyone that was believed to be
21 SNM, housed at PNM?

22 A. I may have.

23 Q. Who was that?

24 A. There was several. I can't remember right
25 offhand. I'm sure there was some that I did

1 interview.

2 Q. And did you use those interviews to help
3 form the opinions you intend to offer in this case?

4 A. I would have to look at them. Because I do
5 not remember the interviews, or if I ever gained any
6 information.

7 Q. Have you been asked by the Government to
8 offer opinions about the Javier Molina homicide? For
9 instance, why it was carried out?

10 A. I've given my opinion on it, yes.

11 Q. I mean, is it your understanding that
12 you're going to, depending on the outcome of the
13 Judge's ruling, testify at the trial regarding the
14 Javier Molina homicide and why it happened?

15 A. Yeah, I've spoken to them about it, yes.

16 Q. Do you have an opinion about whether Javier
17 Molina was an SNM member?

18 A. Yes.

19 Q. And what is that opinion?

20 A. That he was.

21 Q. And that's based upon what?

22 A. Information received from interviews of
23 other SNM members that he was a member.

24 Q. Anything else?

25 A. I don't recall. I believe maybe court

1 documents.

2 Q. Do you know what court documents?

3 A. Excuse me?

4 Q. Do you know what court documents?

5 A. They are either court documents or police
6 reports that he was a self-admitted SNM member. But
7 to be honest with you, I'm not sure. I haven't -- I
8 remember from the interviews with individuals that --
9 the active members of SNM and inactive members of
10 SNM -- that they did state that Javier Molina was a
11 member of the SNM.

12 Q. Do you intend to testify that Javier Molina
13 was murdered because he was believed to be -- well,
14 strike that.

15 Is it your opinion to testify that Javier
16 Molina was murdered as a result of an SNM-ordered
17 hit?

18 A. Yes.

19 Q. Is that based upon interviews with other
20 SNM members?

21 A. Correct.

22 Q. Or review of documents related to similar
23 interviews?

24 A. Correct.

25 Q. Is it based upon anything else?

1 A. No.

2 Q. Now, you're probably aware, my client Rudy
3 Perez is charged in connection with the Javier Molina
4 homicide; true?

5 A. Correct.

6 Q. Do you have an opinion about whether Mr.
7 Perez is a member of the SNM?

8 A. Only through documentation, and his
9 self-admission to me that he is a member of the SNM.

10 Q. His admission to you?

11 A. Correct.

12 Q. He -- when did that admission occur?

13 A. I've interviewed Mr. Perez on several
14 occasions, and he's admitted to me that he's an SNM
15 member.

16 Q. How many times have you interviewed Mr.
17 Perez?

18 A. I believe about two or three times.

19 Q. And was that in connection with classifying
20 him as a member of SNM?

21 A. No.

22 Q. What were the interviews for?

23 A. I can't remember.

24 Q. Okay.

25 A. I'd have to look at my notes.

1 Q. Did you ever interview him related to the
2 Javier Molina homicide?

3 A. I don't believe I have.

4 Q. Did he ever tell you anything about the
5 Javier Molina homicide?

6 A. He's never told me, no.

7 Q. Did you, since he was indicted in this
8 case, which I'll represent to you occurred
9 approximately April 2016, did you attempt to
10 interview him about the Javier Molina homicide?

11 A. I don't remember.

12 Q. Did you ask him whether he would talk to
13 you and cooperate with the Javier Molina homicide?

14 A. Yes, I did.

15 Q. And he told you, "No."

16 A. Correct.

17 Q. Were you aware that members of -- alleged
18 members of the SNM -- in the pod where Javier Molina
19 was murdered were working in the wheelchair program
20 in Southern New Mexico?

21 A. Was I aware they were working in the
22 wheelchair program?

23 Q. Yes.

24 A. Correct, yes.

25 Q. And did you have an understanding that

1 those inmates were obtaining metal from the
2 wheelchair program to make shanks to bring into the
3 pod?

4 A. After the fact, yes.

5 Q. You found out about it after the fact?

6 A. Yes. I didn't know during -- that they
7 were working in there to manufacture weapons.

8 Q. And that's based upon interviews with other
9 inmates?

10 A. Correct.

11 Q. So I want to ask you just a little bit
12 about that. You talked about the manufacturing of
13 shanks; correct?

14 A. Correct.

15 Q. And shanks can be made, I think as you
16 testified, to carry out an assault or a murder,
17 right?

18 A. Right.

19 Q. But also, I think you said that they can be
20 used as a form of commerce, for trading, selling,
21 that sort of thing?

22 A. Correct.

23 Q. And that's the sort of things you've
24 learned through interviews of inmates?

25 A. Correct.

1 Q. Did you interview in connection with this
2 case any of the cooperating defendants or cooperating
3 witnesses that are involved in the Javier Molina
4 homicide?

5 A. Did I interview them?

6 Q. When I say in connection with this case, I
7 mean about the Javier Molina homicide?

8 A. No.

9 Q. Or about cooperating with the Government to
10 testify regarding the Javier Molina homicide?

11 A. I don't believe I did.

12 Q. So you haven't conducted an interview of
13 Timothy Martinez?

14 A. No.

15 Q. About the Javier Molina homicide?

16 A. No.

17 Q. Mario Rodriguez?

18 A. No.

19 Q. Jerry Armenta?

20 A. No.

21 Q. Jerry Montoya?

22 A. No.

23 Q. Billy Cordova?

24 A. No.

25 Q. Lupe Urquizo?

1 A. No.

2 Q. I forgot to ask you this question earlier.
3 Can you tell me what a bone crusher is?

4 A. Yes, that's a term used by inmates when
5 they have a good-sized shank that will go right
6 through your bones, that will crush your bones when
7 they hit you with it. So a bone crusher would refer
8 to something that would definitely cause fatal blows.

9 Q. And you know that from interviewing
10 inmates?

11 A. Correct.

12 Q. Do you have any other source of knowledge
13 for how you learned what a bone crusher is?

14 A. Yeah. I think we discussed it with, like
15 Mr. Valdez; I've discussed that with him before. And
16 they use the same term in California with other
17 counterparts in the California prison system, that
18 they also say that -- a bone crusher is also
19 something that they know to be a weapon or a shank
20 that causes -- that could cause fatal damage.

21 Q. I'm going to move on now.

22 You were talking -- this came from the
23 notice about sanctions and reasons for sanctions;
24 correct?

25 A. Correct.

1 Q. So the sanction, if I understand it
2 correctly, is a punishment on a member of an STG by
3 other members of that STG; correct?

4 A. Correct.

5 Q. For violating some code or rule or
6 unwritten rule of that STG?

7 A. Correct.

8 Q. And I think that you testified that one of
9 the grounds someone might receive a sanction is if
10 they don't follow the orders of a member of that STG?

11 A. Correct.

12 Q. So if a higher-up, if you will, orders
13 someone to do something, and they say no, that person
14 who says no could be in trouble?

15 A. Correct.

16 Q. Have violence used against them?

17 A. They could have, yes.

18 Q. And if a higher-up orders a hit, they order
19 someone to be killed, and another member of the STG
20 interferes with that in some way, they could receive
21 a sanction?

22 A. Correct.

23 Q. And this is information that you've learned
24 from doing interviews; correct?

25 A. Correct.

1 Q. Is that also something you've discussed
2 with -- I lost his name -- the individual from
3 California?

4 A. Sanctions, as it pertains to their prison
5 gangs?

6 Q. Yeah, the idea that if you refuse an order,
7 or interfere with an order, like a hit, that you can
8 then be subject to violence?

9 A. Yeah, I did. That did -- I did have those
10 conversations with my counterpart in California when
11 I was working on the certification, or the
12 investigation into the certification of the
13 California Surenos.

14 Q. And that was when you were working with
15 Mr. Al Valdez.

16 A. No, some counterparts within the California
17 Corrections Department on that case.

18 Q. Okay. But, in general, you've consulted
19 with Mr. Valdez from California about some of the
20 commonalities you all see?

21 A. Correct.

22 Q. And is that one of the things you've talked
23 with Mr. Valdez about, this idea of being sanctioned
24 for interfering with an order?

25 A. I'm sure that that's a good part of our

1 conversation. I don't recall for sure, but I'm sure
2 that's a part of our conversation.

3 Q. I want to try to clarify something. You
4 testified, when Ms. Jacks was examining you, about
5 emails that -- I thought you said you still had them,
6 emails that maybe you had shared with the prosecution
7 team. And then, when you spoke to Ms. Duncan, when
8 Ms. Duncan was examining you, you testified that you
9 were in the habit of deleting your emails. So I
10 wanted to try to clarify that, and determine if you
11 still have emails that have been corresponded in
12 relationship to this case?

13 A. I think I had said that some of my emails
14 had been deleted, that pertained to something else
15 with Agent Acee, not pertaining to this case, not
16 pertaining to the SNM.

17 Q. But you believe you still have the emails
18 related to this?

19 A. Yeah, I believe that they should still
20 exist. Because even if they get erased, even if I
21 delete them, it goes into a backup system.

22 MR. VILLA: May I have just a moment, Your
23 Honor?

24 THE COURT: You may.

25 MR. VILLA: I think those are all my

1 questions.

2 THE COURT: Thank you, Mr. Villa.

3 Any other defendants' counsel that wishes
4 to cross-examine Mr. Martin on the Daubert or
5 Rodriguez motion?

6 All right. Ms. Jacks, you're about ready
7 to leave?

8 MS. JACKS: Actually I was kind of waiting
9 to see what was going to happen.

10 THE COURT: Okay.

11 MS. JACKS: But I appreciate --

12 THE COURT: Well, if I don't get to speak
13 to you, have a safe trip. Thank you for your
14 participation.

15 MS. JACKS: Thank you.

16 THE COURT: Ms. Armijo, do you wish to
17 conduct redirect of Mr. Martin?

18 MS. ARMIJO: Yes, Your Honor. Thank you.

19 THE COURT: Ms. Armijo.

20 REDIRECT EXAMINATION

21 BY MS. ARMIJO:

22 Q. Now, a lot has been asked of you over the
23 last 24 hours. And I wanted to ask you some
24 questions in general. I know that you've testified
25 that part of what you consider in coming to your

1 opinions about the SNM is interviews, but you also
2 mentioned other things as well. As far as the
3 interviews, does it include all the things you
4 previously testified, which include the orientation
5 reclassification, people dropping out, or being moved
6 around?

7 A. Yes, there is a lot of variations in the
8 interviews, they don't -- specifically for just one
9 reason. There are multiple reasons we interview.

10 Q. Does it include current members and past
11 members?

12 A. Correct.

13 Q. Are your opinions also based upon the
14 trainings that you've attended?

15 A. Correct.

16 Q. And what about talking to other law
17 enforcement sources?

18 A. Yes.

19 Q. What about letters that you have been --
20 either that you or others in Corrections have
21 obtained from gang members?

22 A. Correct.

23 Q. Do you use that information?

24 A. Yes.

25 Q. Do you also use as part of your opinion

1 jail calls that are listened to by law enforcement
2 regarding gang activity?

3 A. Yes.

4 Q. Do you also for your opinion depend on STIU
5 files and other law enforcement or Corrections'
6 documents pertaining to gang members?

7 A. Yes.

8 Q. And do you also base your opinion based on
9 books and articles, such that you've already
10 testified to?

11 A. Yes.

12 Q. Now, the notice that you were provided to
13 look over, was that actually drafted by the U.S.
14 Attorney's Office, in comparing it to the indictment
15 in this case?

16 A. I'm not sure.

17 Q. It's the Document 1299 that Ms. Jacks went
18 over with you.

19 A. Right.

20 Q. Was that actually drafted by the U.S.
21 Attorney's Office, and you were asked to review it?

22 A. Yes.

23 Q. Now, a lot has been said about the
24 validation process by the Corrections. Is validation
25 different -- if you're a validated member is that

1 different from a different criteria -- let me see,
2 I'm sorry, I'm wording this poorly. Can somebody be
3 a member of SNM, but not necessarily validated by
4 Corrections Department?

5 A. Correct, yes.

6 Q. All right. And is that because the
7 validation process is such that Corrections has to
8 basically, you know, dot the Is and cross the Ts, to
9 make sure that there are certain verifications that
10 are met for validation?

11 MR. SINDEL: Your Honor, I'm going to
12 object to the leading form of the questions. She can
13 just ask what process they use rather than suggesting
14 it.

15 THE COURT: Don't lead.

16 Q. Let me ask the question differently. For
17 validation, is that -- can somebody be a member and
18 not be validated by the Corrections Department?

19 A. Yes.

20 Q. And explain how.

21 A. A person could have -- we just might not
22 have gotten all the documentation to provide that
23 they are a member.

24 For example, Timothy Martinez came into the
25 prison system and was not suspected or validated as

1 an SNM Gang member. And once he was assaulted in the
2 general population, he ended up self-admitting that
3 he was an SNM member.

4 Or members that have been recruited in the
5 county jail that we don't know about. Or they could
6 have been in the system for a long time, and we
7 haven't acquired enough documentation for validation
8 purposes.

9 Q. And you were also talking about removing
10 someone from that. If you remove someone that is --
11 was previously validated, does that necessarily mean
12 that there was a previous error?

13 A. No.

14 Q. What does that mean? What can that mean?

15 A. That means that he has been inactive for a
16 long period of time, and that there is no reason to
17 keep him validated. He's no longer associated or an
18 active -- what we would consider an active member.

19 Q. Now, you were questioned a great deal about
20 why somebody who is an active SNM member while
21 incarcerated, and they go out on the street and then
22 they come back in, and maybe they, you know, didn't
23 put in their work on the street. And if they came
24 back in, why you would believe them as far as -- or
25 why would you put truth in the entry -- I'm going to

1 say -- reentry interview as to where to place them?

2 A. Because we're trying to protect them from
3 harm or death. So there is no reason for me not to
4 believe that someone is in fear for their life, if
5 they're telling me they're in fear for their life.

6 Q. So, for instance, let's just say a person
7 comes back in; he's been out on the street, and they
8 don't want to talk to you. Now, they're not telling
9 you, yes, I'm active, or no, I'm active. And as a
10 result, you put them back in the SNM pod. Would it
11 be dangerous, yes or no -- you tell me -- if someone
12 is not good standing to go back into the SNM pod?

13 A. Yes, it would.

14 Q. And does that go into your -- I guess your
15 judgment call of whether or not this person is
16 telling you the truth, because they would know that
17 their safety is in danger?

18 A. Correct.

19 Q. Now, is it a practice for prison gang
20 experts to research and understand a prison gang's
21 history?

22 A. Is it a common practice for them to
23 research? Yes.

24 Q. And is it a common practice for gang
25 experts and law enforcement officers to read books

1 about the formation of prison gangs?

2 A. Yes.

3 Q. Is that something that you have done?

4 A. Yes.

5 Q. Is it a common practice for gang experts
6 and law enforcement officers to interview gang
7 members and ex-gang members to find out this
8 background and historical information?

9 A. Absolutely.

10 Q. And is that something that you have done?

11 A. Yes.

12 Q. Is it a common practice for prison gang
13 experts and law enforcement officers to speak to
14 other law enforcement and corrections officers to
15 understand their observations, opinions, and
16 background and history of certain prison gangs?

17 A. Absolutely.

18 Q. And is that something that you have done?

19 A. Yes.

20 Q. Is it common for prison gang experts and
21 law enforcement officers to --

22 MR. ADAMS: Your Honor, objection to the
23 leading nature of these questions.

24 THE COURT: Well, I agree they're leading.
25 But I think she's trying to establish some record

1 here. I think we know what the answers are, so I'll
2 allow it. Overruled.

3 Q. Is it common for prison gang experts and
4 law enforcement officers to review historical prison
5 documentation to form opinions about a gang's origin,
6 background, and history?

7 A. Yes.

8 Q. Is that something that you have done?

9 A. Yes.

10 Q. And lastly, did you personally use all of
11 these common research methods to form the basis of
12 your opinions on the SNM's origins, background, and
13 history?

14 A. Yes.

15 MS. ARMIJO: I have nothing further. Thank
16 you.

17 THE COURT: All right. Thank you, Ms.
18 Armijo.

19 All right. Mr. Martin, may step down.
20 Thank you for your testimony.

21 THE WITNESS: Thank you, sir.

22 THE COURT: Mr. Castellano, remind me the
23 procedure? We were going to take some evidence, keep
24 the evidence going, because of your expert, so you
25 want to, before we do any argument or anything

1 further, you want to put on your next expert?

2 MR. CASTELLANO: Yes, sir. We have
3 additional information. I believe, Ms. Armijo may
4 want to take up a housekeeping matter first. But we
5 are ready to present more evidence related to the
6 James hearing after that.

7 THE COURT: Okay.

8 MS. ARMIJO: Your Honor, and I believe that
9 Mr. Beck actually is going to be taking care of it.
10 It has to do with an update on the electronic issue.

11 THE COURT: All right. Mr. Beck.

12 MR. BECK: Your Honor, so, on Monday we
13 discussed that the Court was going to order
14 disclosure of a single ELSUR device. And I relayed
15 that to FBI. And I had a conversation with the
16 general counsel in Albuquerque last night, and then a
17 conversation with the general counsel in Albuquerque
18 and couple attorneys from the Operational Technology
19 Division and the Office of the General Counsel in
20 Quantico for FBI. And we will be filing a motion to
21 reconsider the Court's order. I expect that I'll
22 discuss with the Operation Technology Division some
23 of the things that they expect that I'll include in
24 that motion to reconsider, and some of the arguments
25 that are a little bit more technical than I'm able to

1 articulate right now. But they have gotten in
2 contact with me, and do intend to at least raise
3 their objections to the Court's order at this point.

4 So I want to alert the Court to that,
5 because I know it's something that's been time
6 sensitive for everyone in here; that they're working
7 on it. And I expect that I've given them the
8 timeline, and I expect that we will file a motion to
9 reconsider before December 7th's hearing.

10 THE COURT: Would it be helpful so that we
11 have people that are fully able to answer the
12 questions that I order, or you could make sure that
13 the people from the FBI that are able to answer all
14 questions are here?

15 MR. BECK: So I told -- I told everyone
16 that I talked to that the Court did order production.
17 And that the Court ordered production. And so I told
18 them that the Court expects a written motion to
19 reconsider.

20 What I understand is that they are not, at
21 this point, interested in being here to argue it
22 personally. But they, for some reason, think that
23 they may be able to download information into my head
24 so that I may -- I know, I agree, no, please, I
25 laughed when they said that, too. My words, not

1 theirs. They had better technology words than I do.
2 But for some reason they think they'll be able to
3 help me articulate a better basis for our objection
4 to the Court.

5 I told them I'm willing to do that. I
6 said -- I gave them the Court's instructions on
7 Monday, that -- the Court's reasoning behind its
8 order. To be frank with the Court, with everyone
9 here, I'm not sure it will change the Court's
10 decision, since it will again be coming from my
11 mouth. But I told them that I would be willing to do
12 my best and to raise that with the Court, and to see
13 the Court's point of view.

14 THE COURT: Well, let me say this: And I
15 don't mean to be disrespectful in any way, but it's
16 signaling to me -- and you can tell me if this is
17 wrong -- it's signaling to me that the FBI is sort of
18 taking a pro forma position. This is something they
19 feel like they need to do in the federal courts of
20 the nation, is to protest against this, but they're
21 not fighting me very hard. And so I'm probably on
22 the right -- at least in my own mind, I think I'm on
23 the right track.

24 So you might convey that to them, so that
25 if I'm misreading what the FBI -- if this is a more

1 sensitive nature, and I'm not picking up all the
2 security implications from it, it would probably
3 behoove them to send somebody here that can answer
4 all questions. Otherwise, I'll probably persist in
5 this sort of impression that I'm getting.

6 MR. BECK: That's similar to the
7 conversation that I had with them last night.

8 THE COURT: All right. Just as long as
9 we --

10 MR. BECK: I just wanted to raise that with
11 the Court.

12 THE COURT: I appreciate it. Maybe we can
13 take that up -- I know it's not going to give the
14 defendants much time to file a written response, but
15 I think you're going to be reading with me at the
16 same time, I think we're all going to be prepared to
17 argue, and then maybe I can rule so that we can keep
18 the things moving.

19 More housecleaning?

20 MS. SIRIGNANO: Just in response, Your
21 Honor. Thank you.

22 THE COURT: Oh, okay. Responses to
23 housecleaning.

24 MS. SIRIGNANO: Yes, thank you, Judge.

25 THE COURT: It's housekeeping, isn't it;

1 it's not housecleaning.

2 MS. SIRIGNANO: Maybe a little of both.

3 Judge, Ms. Jacks and I and a number of
4 defense counsel worked on that letter that she filed
5 with the Court regarding the electronic evidence.
6 And I would just like to request the Court to give
7 the Government a deadline as to when they're going to
8 file that motion to reconsider. And also --

9 THE COURT: I think Mr. Beck says he's
10 going to have it by the 7th. So what I was proposing
11 is take it up the first thing on the 7th. That's
12 clear. And that will move things along.

13 MS. SIRIGNANO: Well, I'm sorry. I'm
14 confused. He's going to file the motion on the 7th,
15 or we're going to argue it on the 7th?

16 THE COURT: He's going to file it before
17 the 7th. He's nodding affirmatively. And we'll take
18 it first thing up on the 7th.

19 MS. SIRIGNANO: Well, I'd like to get a
20 date, Your Honor, only because we have to respond to
21 it.

22 THE COURT: That's what I was just saying.
23 I mean, we're all just going to be reading. I mean,
24 and do we really need to -- I mean if we delay the
25 response -- I mean if we delay argument because of

1 the response, we're probably delaying the production.

2 MS. SIRIGNANO: Judge, the only reason why
3 I ask --

4 THE COURT: I think Mr. Beck may solve my
5 problem. Mr. Beck.

6 MR. BECK: Being somewhat familiar with the
7 Court's practice, the Court tends to give us an
8 inclination the way the Court is leaning.

9 THE COURT: Is that helpful? Everybody is
10 nodding.

11 MR. BECK: In this case the Court has
12 already ordered production. So I think the morning
13 of the 7th, if a response is required, a written
14 response, or helpful to the Court, I think the Court
15 probably will give the defense more time to respond
16 in a written fashion. If it's not going to be very
17 helpful in oral argument, may keep the Court leaning
18 the same way as Court has already ordered us to
19 proceed with production. I think we'll know that
20 that morning. So I don't want to put words in the
21 Court's mouth. But I think we could probably handle
22 it on the 7th.

23 THE COURT: Let me ask you, then I'll see
24 if that works for Ms. Sirignano. Are you sort of
25 thinking that this may be a late night on Wednesday

1 filing?

2 MR. BECK: Those who know me well know that
3 I don't do late nights very well. So I wouldn't
4 expect it will be a late night filing. It might be
5 filed on the 6th, on Wednesday the 6th. But I think
6 most people in this room would be up for it. I think
7 most people would still be at work by the time this
8 gets filed.

9 THE COURT: Let me ask this: I guess what
10 I hear Mr. Beck saying is that: Could you live with,
11 he'll file his motion whenever he gets it filed
12 working with the FBI. We'll argue it on the 7th.
13 And if you still feel at that point you need more
14 time to file a written response, then we can delay
15 ruling and for you to file a written response.

16 MS. SIRIGNANO: Judge, with all respect,
17 and with deep regret, I can't agree to that.

18 THE COURT: I think everyone is signaling
19 you may not need to file a response at all.

20 MS. SIRIGNANO: Could be. But I'd like to
21 have the name of the expert that the Government
22 intends to bring.

23 THE COURT: They're not intending to bring
24 anybody.

25 MS. SIRIGNANO: Okay. I'd like to have my

1 expert there, if needed. That's the only reason why
2 I'm asking. And so if we were able to file a
3 response, and I could get my expert --

4 THE COURT: Have the expert here at 9:00.

5 MS. SIRIGNANO: On the 7th, or --

6 THE COURT: 9:00 on the 7th. We'll take it
7 up first thing.

8 MS. SIRIGNANO: So will we have an
9 opportunity to have a response before or after? I'm
10 just worried about time running out, Judge. That's
11 the only thing. I'm not trying to be difficult at
12 all. We've been asking for this for months now,
13 literally.

14 THE COURT: I know you've been asking for
15 it for months. But we've been very careful about
16 some things. Let's just leave it at this: The FBI
17 will file their response when they want it. You have
18 your expert here if you want him at 9:00. We'll take
19 it up first thing in the morning. If you don't want
20 a ruling at that point, then we can delay it further
21 for you to file a written response.

22 MS. SIRIGNANO: Thank you, Your Honor.

23 THE COURT: All right. Do you have some
24 housekeeping?

25 MR. VILLA: If you don't mind, Your Honor.

1 It doesn't have to do with that issue, but I thought
2 if the Government is going to put on more witnesses
3 and go to the 5:30, and we're all going to get out of
4 here. So what I wanted to address with the Court is
5 scheduling for next week. Depending on what happens
6 and what other evidence the Government might intend
7 to put on, we have teed up -- and we've been in
8 northbound communication with Ms. Wild -- Mr. Perez'
9 motion to suppress for lost evidence. And Mr. Baca
10 has a couple of suppression motions that we, in our
11 communications with Ms. Wild, have suggested will
12 take up those two days that we have set for next
13 week. So I want to make sure that, if that's still
14 the case: One, because we have some experts coming
15 down that don't have to be here; but two, because we
16 think those need to get heard then. And, if
17 necessary, the presentation of evidence that the
18 Government is doing now would have to be put off
19 later to the next set of hearings. And I don't know
20 when that's going to be. Because the week after that
21 is the other two suppression motions for Mr. Perez
22 and Mr. Herrera. And there is even more experts
23 queued up to be here for that, too. So I just want
24 to try to get some clarity before we all get out of
25 here.

1 THE COURT: Ms. Wild, are you there? She's
2 not there. She was heading for a meeting. We'll see
3 if she's available later on, and maybe we can pick it
4 up. It may be that you are just going to have to
5 talk to her between now and then. And then I'll have
6 to be better informed. I know y'all had a lot of
7 discussions with Ms. Wild while this hearing is going
8 on, and I'm probably less informed about that. So I
9 don't think I can answer anything right at the
10 moment. We'll see if she can get back on the phone.
11 If she can contribute to this, then we'll spend a
12 little bit of time doing it. Otherwise, we may just
13 have to try to work it out during the week through
14 Ms. Wild.

15 MR. VILLA: So the issue, Judge; I think
16 everything is set up just fine, assuming we don't
17 spill over from today. And I'm sure the Government
18 would like to be heard on that.

19 But the only other issue that I had for
20 housekeeping was real-time at counsel table for
21 trial. Does the Court need a motion for something
22 like that, or is that something you can just ask IT
23 about?

24 THE COURT: Well, I think it's going to
25 incur some cost. Why don't y'all first talk to

1 Ms. Waters. And then work with Ms. Bean. She's done
2 it a lot of times. It's been more in the civil
3 context than it has in criminal. But start with
4 Ms. Waters, then work with Ms. Bean. I don't think
5 it takes a court order. But somebody can enlighten
6 me if it does.

7 MR. VILLA: Yes, Your Honor. Thank you.

8 THE COURT: All right. Let me hear from
9 Mr. Lowry, unless he wants to defer. If it's on the
10 scheduling, I'd like to kick it down the road a
11 little bit, but --

12 MR. LOWRY: Yeah, Judge. Not to belabor
13 this, but I join what Mr. Villa said. And I just
14 think I'm anticipating a motion for disqualification
15 for the Court to assess the conflict. And I think
16 that's going to eat up into some of the time next
17 week. But I appreciate the Court's ruling and
18 treating everything expeditiously here. But I just
19 wanted to bring that to your attention.

20 THE COURT: Okay. Ms. Armijo.

21 MS. ARMIJO: Yes, Your Honor, I agree with
22 Mr. Lowry. I think that we could probably take up
23 that issue. I do anticipate filing something,
24 hopefully within the next day or two. And I know
25 that they want to take care of it quickly. And I

1 believe that the person at issue may be available for
2 that as well. So that should be taken care of next
3 week, to add to the agenda. I'll email Ms. Wild
4 about that.

5 And I guess the issue to put out for the
6 defense at the end of the day so that Cori and Amy
7 and I can get back in touch with Ms. Wild about, is I
8 anticipate we are now probably a day and a half
9 behind. Because we will start the next segment now
10 of our James hearing. But I anticipate that would
11 be, with cross-examination, at least half a day. And
12 we anticipate for the second expert at least one day.
13 So I think we're a day and a half behind. So then
14 the question for the defense to consider is: Are we
15 going to be bumping some of these hearings that we
16 already have set, or are we going to be adding a
17 makeup day for what we have? And we would like to
18 know, just because it also requires us to get
19 witnesses here. So I think that's just going to be a
20 matter of what the priorities are, Your Honor, and
21 for the defense to consider.

22 THE COURT: All right. Well, since Mr.
23 Lowry brought it up, and you brought it up,
24 Ms. Armijo, take a look, Mr. Lowry, at New Mexico
25 Rule 16-109.

1 MR. LOWRY: Your Honor, I've been studying
2 that particular rule.

3 THE COURT: 16-109(b) applies only when
4 there is a former client and a former law firm. So
5 when I get this opinion on Mr. Davis issued, take a
6 look at it, because I think it may answer some
7 questions there.

8 Let me make this comment: I'll make two
9 comments here, so it will be even-handed. I'm seeing
10 a lot of -- the Government raising a lot of conflict
11 issues. You've got to do what you have got to do,
12 and I know the rules. But I hope that -- these may
13 be late -- I don't mean late in the sense that they
14 couldn't have been raised before -- but they're late
15 in this process, these motions to disqualify counsel
16 are not a backdoor attempt to move the trial.

17 And as far as defense lawyers, we can sit
18 here and do Daubert hearings, like we did for 24
19 hours here, but -- we can do it. We'll start a
20 trial. So think about how you're going to use your
21 time. We're not going to go into a filibuster here.
22 So if it's really important to ask every one of those
23 questions, okay. But we're going to start a trial on
24 the 29th. So if not every motion is heard, not every
25 expert is asked every question, every argument has

1 not been made, every motion hasn't been file, we're
2 starting on the 29th. So you've got to start
3 thinking about how you're going to use this time
4 wisely. So think about that.

5 All right. Shall we take up the next
6 expert?

7 MR. CASTELLANO: Yes, Your Honor.

8 THE COURT: I guess it's the James
9 hearing -- the next witness on the James hearing.

10 JAMES HEARING (Continued)

11 MR. CASTELLANO: The United States re-calls
12 Special Agent Bryan Acee.

13 THE COURT: Mr. Acee, I'll remind you that
14 you're still under oath.

15 BRYAN ACEE,
16 after having been previously sworn under oath,
17 was questioned and testified further as follows:

18 DIRECT EXAMINATION

19 MR. CASTELLANO: Your Honor, in order to
20 focus the Court's attention a little bit in terms of
21 which conspiracy we're talking about, these next
22 statements will be largely focused on Counts 9 and
23 10, conspiracies to murder Wayne Santistevan and
24 Gregg Marcantel. There will be some other conspiracy
25 related statements mixed in there. But those are

1 heavily focused on those two conspiracies.

2 BY MR. CASTELLANO:

3 Q. Agent Acee, I want to ask you about some
4 letters that were either intercepted or retrieved by
5 STIU agents in this case related to the murders of or
6 the conspiracies to murder Mr. Marcantel and
7 Mr. Santistevan. Are you familiar with those?

8 A. I am.

9 Q. Let me turn your attention to one that was
10 received by STIU on or about March 27, 2015. Can you
11 tell me who authored that letter?

12 A. Yes. Sir, I have in front of me notes and
13 302s. Am I able to reference those?

14 Q. Okay. For the record, the first letter I'm
15 referring to is at DeLeon 3372.

16 A. Okay. The first letter is from Roy
17 Martinez, a/k/a "Shadow." It's addressed to Juan
18 Carlos Gutierrez, a/k/a, "Gotti." In this letter
19 Martinez orders Gutierrez to kill Gregg Marcantel
20 pursuant to orders that were given to him by Anthony
21 Baca, while they were housed together at the Southern
22 New Mexico Correctional Facility in 2013.

23 The letter goes on instructing Gutierrez to
24 contact other members on the street to make this
25 happen. And if the other members on the street

1 failed to help carry out the hit, they should be
2 killed. And that other members would be in contact
3 with him to help him -- him being, excuse me,
4 Gutierrez -- to help ensure that that hit took place.

5 (Ms. Jacks left the courtroom.)

6 Q. Let me turn your attention to the next
7 letter, also on page 3372 of DeLeon. Tell us who
8 wrote that letter and to whom it was written?

9 A. The letter was written by Roy Martinez,
10 addressed to Damian Loblado, a/k/a "Cuba." And in
11 this letter Martinez tells him that the time has come
12 for "Cuba" to show his loyalty to the S, which he had
13 not yet done, and that he was to kill Gregg
14 Marcantel.

15 It also goes on to say that Gutierrez --
16 the person that we just talked about on the first
17 letter would be in contact, and that they should work
18 together. Other members would be in touch, and that
19 they should not fail this mission.

20 MR. CASTELLANO: For the record, Loblado is
21 spelled L-O-B-R-A-D-O.

22 Q. Let me turn your attention to page 3373 of
23 the discovery. Can you tell us about the letter on
24 that page received on or about March 30, 2015?

25 A. This letter is also from Roy Martinez.

1 This one is addressed to Arthur Chavez, a/k/a
2 "Lonely."

3 Q. What's the content? Well, who is it
4 written to?

5 A. Again, this is to Chavez, a/k/a "Lonely,"
6 and Martinez is telling him that at the direction of
7 the viejo, who we believe is Anthony Baca, and that
8 it's about a list Anthony Baca and Chavez had
9 previously discussed. Martinez said that Gregg
10 Marcantel had degraded Anthony Baca and dishonored
11 the SNM. In the letter he ordered Chavez to handle
12 the hit carefully and discreetly. Martinez concluded
13 the letter by threatening Chavez that there were
14 other members on the street to take out any members
15 who refused to carry out the hit. Martinez advised
16 that there would be no more second chances. And then
17 Martinez again referenced a hit list that Anthony
18 Baca discussed with Chavez, and named Marcantel as
19 the priority. And I'm quoting Martinez; he said, "He
20 must go," a reference to Marcantel.

21 Q. And further down on that document, do you
22 see where there is additional information about a
23 green light for members who refused to carry out the
24 hit?

25 A. Yes. Martinez gave Chavez the green light

1 to take out any SNM members who refused to assist
2 with completing the objective of killing Marcantel.
3 Martinez also gave Chavez a deadline of August 31,
4 2015, at midnight, to complete the hit. Martinez
5 also threatened Chavez that if he failed to do this
6 or refused to conduct it, that he'd be hit as well,
7 as would any other member that failed to go along
8 with the mission.

9 He also claimed -- Martinez claimed that
10 there were three SNM members watching Chavez at the
11 time Chavez was on the street.

12 Q. What was purpose of watching him?

13 A. To ensure that he was making good on
14 progressing on the mission.

15 Q. Let me turn your attention to page 3375.
16 Can you tell us about the letter on top of that page?

17 A. Yes. This pertains to a letter from Robert
18 Martinez, a/k/a "Baby Rob," and it's addressed to
19 Sammy Griego, a/k/a "Sammy G." In this letter Robert
20 Martinez stated that the SNM leadership had decided
21 to allow Griego one opportunity to show his loyalty
22 to the SNM by taking out Gregg Marcantel and Dwayne
23 Santistevan. In the letter Martinez gave Griego the
24 flexibility to work out the details of the hits on
25 his own. Martinez threatened Griego by stating if he

1 failed to conduct the hits, he'd be taken out.

2 Martinez also told Griego that other SNM
3 members would be in touch with him; that they should
4 work together. Martinez instructed Griego to get in
5 touch with Gerald Archuleta, a/k/a "Styx."

6 In the letter Archuleta is referred to as
7 "Grandma."

8 Q. Let me turn your attention to the next
9 letter.

10 A. This letter is from Robert Martinez, "Baby
11 Rob," to Ruben Hinojosa. In this letter Martinez
12 stated that the SNM leadership are tired of SNM
13 members getting out of the prison and doing nothing
14 for the SNM. Martinez said that this type of
15 behavior would no longer be tolerated and ordered
16 Ruben to show his loyalty by taking out Gregg
17 Marcantel and the Dwayne Santistevan. Martinez
18 threatened Ruben just like the other letters, and
19 advised that other SNM members would be getting in
20 contact with him. And concluded that, if he didn't
21 follow through with the mission, that his life would
22 be in jeopardy.

23 MR. CASTELLANO: For the record, Ruben
24 Hinojosa's last name is spelled H-I-N-O-J-O-S-A.

25 Q. At the bottom of the page I'm going to ask

1 you about information received regarding another
2 statement by Mr. Baca on August 5, 2015.

3 A. On that date, myself and Joseph Sainato and
4 Task Force Officer Mark Myers interviewed a
5 confidential human source. This particular source is
6 one of the original members of the SNM. I don't
7 believe I had previously met this person. So this
8 was my introductory meeting with this person and
9 debriefing.

10 During that debriefing, in reference to the
11 hits on Marcantel and Santistevan, the CHS told me
12 and the other agents that Anthony Baca was eager to
13 hit both Marcantel and Santistevan; that according to
14 this source, Baca told the source that he was excited
15 about the recognition the SNM would get all over the
16 country if they were successful.

17 This source claims that Baca told him that
18 not even the Mexican Mafia had been able to kill a
19 prison director or cabinet secretary. The CHS stated
20 that Baca first ordered Billy Cordova, a/k/a "Little
21 Shadow," and Robert Sanchez, a/k/a, "Tiny," to hit
22 STIU Administrator Dwayne Santistevan back in 2014,
23 when they were both released from prison. However,
24 both got picked up while they were on parole, and
25 were unable to enact that plan.

1 MR. ADAMS: May I ask for the Bates number
2 of that, please?

3 MR. CASTELLANO: It's 3375 of DeLeon.

4 MR. ADAMS: Okay.

5 Q. Let me turn your attention to page 3376.
6 And let me ask about other statements made by Mr.
7 Baca.

8 A. So with this particular document, I have a
9 number of dates and times. Do you want me to just
10 continue going through those?

11 Q. Yes. At 3376, I want to focus on the
12 person housed next to him.

13 A. Okay.

14 Q. And focus on Mr. Baca's return to New
15 Mexico, and what he stated at that time. It's in the
16 first paragraph on the top of page 3376.

17 A. Yes, sir. Okay, so in October, on October
18 22, 2015, as part of our investigative strategy,
19 Anthony Baca was returned to New Mexico from U.S.
20 Prison -- one of the facilities, one of the four
21 facilities up in Florence, Colorado. He was housed
22 at the Level 6 facility, and he was housed next to
23 one of our confidential human sources.

24 We utilized electronic surveillance, both
25 what I'll refer to as body wires or ELSUR devices, as

1 well as what would otherwise be considered a
2 contraband cellular telephone that I had a wire
3 interception order on.

4 During Mr. Baca's incarceration at the
5 Level 6, Mr. Baca and the CHS, as well as other
6 people, other SNM members in and around the CHS,
7 engaged in conversations. Much of those
8 conversations were recorded via the body wire and/or
9 the contraband phone. The CHS had a reputation for
10 having phones in the past, and I don't think it
11 surprised anyone that he had one in this
12 circumstance. And so as I mentioned numerous phone
13 calls were made and recorded, as were conversations.

14 Q. And what was said about the conspiracy to
15 kill Messrs. Marcantel and Santistevan?

16 A. Quite a bit. In fact, agents on my team
17 that I work with prepared a summary document that
18 consists of several pages, where we summarize those
19 conversations. And then, of course, we also obtained
20 full transcription of those same conversations.

21 Q. Okay. Let's start with the top of page
22 3376. And it's the portion at the end of the first
23 paragraph that says -- starts with the word
24 "Additionally."

25 A. "Additionally, upon his return to New

1 Mexico, Baca added STIU Coordinator Adam Vigil to the
2 hit list. He added Vigil because Vigil was scheduled
3 to testify against the SNM as an expert witness for
4 the State of New Mexico in the Molina homicide
5 prosecution."

6 Q. And is Adam Vigil the same person we heard
7 about earlier today in Mr. Martin's testimony?

8 A. Yeah.

9 Q. I want to refer to some of the summaries
10 you mentioned. This will be DeLeon 3298. And are
11 these first statements that we're going to discuss
12 taken on or about October 22, through October 26,
13 2015?

14 A. Yes, they were.

15 Q. Let me turn your attention then to page
16 3299 at the bottom. It's the conversation ending in
17 010. Can you tell us about that statement, please?

18 A. "CHS says to 'Pup' that Robert" -- in this
19 case Robert Martinez -- "wrote 'Pup' a wila saying he
20 was going to take care of Santistevan because he
21 knows 'Pup' hates him. 'Pup' responds with 'Yes.'"

22 Q. What's a wila, as best as you know?

23 A. A kite or a note, a letter.

24 Q. And who did "Pup" refer to?

25 A. Anthony Baca.

1 Q. Let me turn your attention to the next
2 page, the statement ending in 012.

3 A. "'Pup' explains that Javier Molina and
4 Jerry Montoya were close despite what people thought.
5 Javier would go to Montoya's door and call him names
6 so people thought there was a beef. But they were
7 actually close. 'Pup' told Montoya that if Javier
8 kept talking to him like that, then Montoya needed to
9 hit Javier. But Montoya told 'Pup' it was not
10 serious. 'Pup' then said, 'I even told 'Conejo,'
11 Samuel Silva, 'I'm going to push this shit, eh.'?

12 "Probably a reference to ordering a hit on
13 Javier." That last sentence is the agent's comments.

14 MR. LOWRY: Can we get the number of the
15 call, the call reference number for that?

16 THE COURT: I can't hear you, Mr. Lowry.

17 MR. LOWRY: Pardon me, Your Honor. I just
18 want to get the call reference number to -- the
19 exhibit lists a whole bunch of calls.

20 MR. CASTELLANO: On DeLeon 3300. It's the
21 call ending in 012.

22 Q. On that same page, let me turn your
23 attention to the call ending or the statement ending
24 in 019.

25 A. "'Pup' tells CHS to have Mario, 'Poo-poo,'"

1 who is Mario Montoya hit Santistevan, and/or Adam
2 Vigil, not Marcantel, and have Chris Garcia finance
3 it. He says it needs to be done because the
4 administration is going to tear us to shreds little
5 by little. 'Pup' says after the hits are done, all
6 the brothers will be separated in various states, and
7 that communication with one another will be
8 critical."

9 Q. Earlier we had an indication that Marcantel
10 was to be hit. And here we have an indication that
11 he is not to be hit, by Mr. Baca; is that correct?

12 A. Yes.

13 Q. And does that matter change in the later
14 conversations or statements?

15 A. Definitely.

16 Q. Let me turn your attention to the next
17 statement, ending in 020.

18 A. "'Pup' decided that it's better to" -- I
19 believe that's a typo. It says his; I think it
20 should say "hit. "'Pup' decided that it's better to
21 hit Santistevan and Adam Vigil because they are the
22 one telling lies to Marcantel. Once the hits are
23 carried out and the investigation is done, the news
24 media will realize the corruption and scandals in the
25 prison system and fire Marcantel. 'Pup' is adamant

1 that he wants it done. And says the worst that will
2 happen to the SNM that is they will be sent out of
3 state."

4 Q. And for reference, were these -- the last
5 two statements provided, were those taken on or about
6 October 24, 2015?

7 A. Yes.

8 Q. Now, turning the page to DeLeon, 3301. Can
9 you tell us about the statement that ends at 021?

10 A. "'Pup' wants research to be done on where
11 Vigil and Santistevan live. He believes that the
12 warden lives on prison grounds on Oasis Street, but
13 also observed other houses that could belong to Vigil
14 or Santistevan. He says it will be easier to get
15 them if they do not reside on the prison grounds. He
16 also says he wants to bring down Bustos, a former
17 Associate Warden, who 'Pup' blames for sending him to
18 the ADX. 'Pup' does not specify that he wants Bustos
19 hit, but it appears he wants the get him in trouble.
20 'Pup' believes that Bustos owns a Santa Fe real
21 estate company."

22 Q. Once again, is it your understanding that
23 "Pup" refers to Mr. Baca?

24 A. Yes.

25 Q. And what is Mr. Baca's statement about

1 where he believes Mr. Marcantel lives in the next
2 statement?

3 A. "'Pup' believes Marcantel also lives on
4 prison grounds."

5 Q. And just to be clear, for the Court's
6 determination on these statements, at any point did
7 Mr. Baca talk about murdering Mr. Vigil with anyone
8 other than a cooperator that you're aware of?

9 A. I think he talks about it with Mario
10 Rodriguez, "Blue."

11 Q. I just want to make sure we're keeping
12 track of who they are.

13 A. He may also talk about it with Chris Garcia
14 during the phone conversations.

15 Q. Let me turn your attention now to DeLeon,
16 3303. And I'll turn your attention to the statement
17 at 007. And it's the fourth bullet point down on
18 that summary.

19 A. "'Pup' and CHS ask Garcia" -- in this case
20 it's Chris Garcia -- "for Mario's phone number."
21 Mario is Mario Montoya.

22 Q. And to put the statement in context, what
23 was the purpose of obtaining Mario's phone number?

24 A. Mario Montoya is a good SNM soldier on the
25 streets, and the one that's designated to lead the

1 mission, the hit on Marcantel and Santistevan.

2 Q. And at this point, for the Court's
3 consideration, was Mario working as a cooperator for
4 the Government?

5 A. He was.

6 Q. And were Mr. Baca or Mr. Garcia aware of
7 that?

8 A. No.

9 Q. Let me turn your attention to the statement
10 on the same page, at 008.

11 A. "'Pup' instructs the CHS what to tell Mario
12 regarding Santistevan and Vigil hits. 'Pup' says,
13 'All the shit that's going on with the rasa, it's all
14 fucked up because of those two individuals. So we
15 need this fucking perro done. We'll give you a few
16 days to try to hunt down this motherfucker. 'Pup'
17 also says, 'That's only way this shit is going to
18 stop. If they get handled, you know. Either one of
19 them, it don't matter which one.'

20 The CHS then asks, "Either Santistevan or
21 Adam?

22 "Pup" responds, "Yes, either one. It
23 doesn't matter. One of them will be dealt with in
24 order to stop this foul ass shit that they are
25 doing."

1 Q. Next, let's discuss the statements at 009
2 on the same page?

3 A. "Pup" and the CHS talk with Mario on the
4 cellphone. "Pup" tells Mario to reach out and touch
5 Santistevan or Adam Villa. "Pup" says, "Fucking Adam
6 Vigil and fucking Santistevan are making it real
7 fucked up. They're creating a lot of perro that --
8 making the brothers fight with each other. And we
9 need -- and we need somebody on the calle to fucking
10 touch either of them. It don't matter."

11 Q. And do you know the word calle to mean
12 street?

13 A. Yes.

14 Q. What's the next statement?

15 A. "Pup" says, "And if he, Mario, needs any
16 squina or ferria to finance the perro to get it done,
17 then we're gonna -- we're gonna to work on it till it
18 gets done."

19 Q. What's your understanding from the context
20 of what squina or ferria refer to?

21 A. The SNM members refer to squina as to put
22 in work, and ferria is money.

23 Q. What's the next statement?

24 A. "Pup" instructs Mario to make a silencer
25 out of a lawn mower muffler and a packet with steel

1 wool. Pup says that Chris Garcia can finance Mario
2 if needed. "Pup" asks Mario, "Okay, now, how are the
3 brothers acting out there?" Mario tells him that the
4 brothers don't do anything, and like to get high, but
5 deny it. "Pup" says, "We're going to fucking start
6 identifying them fuckers. That way, when we come in
7 here, knock them off."

8 Q. Let me turn your attention now to page
9 3304. The first statement at the top of the page.

10 A. "'Pup' tells Yvonne to mail in Suboxone
11 strips and 2K so that he can make money."

12 Q. What's your understanding of what 2K refers
13 to?

14 A. It's a synthetic marijuana.

15 Q. And who is Yvonne?

16 A. I believe that's Mr. Baca's girlfriend. I
17 don't believe they're married. They may be, though.

18 MR. CASTELLANO: For the record, that would
19 be conspiracy to bring contraband into the jail or to
20 distribute narcotics. So we still consider it a
21 co-conspirator statement, but just not related to
22 those two counts. We'll be moving for its admission
23 at trial.

24 Q. All right. The next statement at the 011.

25 A. "Pup" and the CHS are talking about

1 planning the hits and the best weapon to be used.

2 "Pup" says, "What's a good cuete for that? It has to
3 be a revolver, carnal, not an automatic. Automatic
4 might jam. Those are easier to put a silencer on,
5 too, a homemade silencer, because it has a barrel."

6 Q. And what's your understanding of what a
7 cuete is?

8 A. Firearm. I made some additional notes
9 after reviewing the transcript.

10 Q. Okay. Tell us what those statements are,
11 please.

12 A. "Pup" said, "You can't say cuete on the
13 phone." And Eric says -- excuse me, Eric, the CHS,
14 Eric Duran, says, "Well, it's my phone," like this
15 phone is good. And then Pup tells him, "Yeah, but we
16 don't know that Chris' phone is good because Chris is
17 always hot."

18 Q. And what is your understanding who "Chris"
19 is?

20 A. Christopher Garcia.

21 Q. On -- let me now refer you to the call or
22 the statement ending in 012, which takes place on or
23 about November 4, 2015.

24 A. "Pup" and the CHS are talking via the
25 cellphone to Mario, getting an update on how Mario's

1 planning is going. "Pup" insists that Mario find out
2 addresses on Google. And again, I'm going to add
3 some notes here from my review of the transcripts.
4 "Pup" is telling Mario to run their names, and make
5 sure he uses someone else's computer, like going to
6 the library. And Mario kind of jokes back and says,
7 Well, "I can't just put their name in and it's going
8 to tell me all this stuff about them." So they kind
9 of banter back and forth about that.

10 MS. SIRIGNANO: Your Honor, can we get a
11 copy of his notes that he's reading off of, that's
12 not part of the Bates number that's been produced to
13 us.

14 THE COURT: Well, I'll let you look at it.
15 If the Government doesn't mind making a copy of it.
16 Do you mind on this one, them getting a copy?

17 MR. CASTELLANO: No, Your Honor.

18 THE COURT: Okay.

19 MR. CASTELLANO: Those will be available to
20 the defense.

21 THE COURT: We'll recess in about 10
22 minutes, and we'll make a copy at that point and you
23 can take a look at it then.

24 MS. SIRIGNANO: Thank you, Your Honor.

25 MR. CASTELLANO: For the record, let me

1 just show you what we're talking about, just so the
2 Court understands. I'm putting on the screen a page
3 of discovery DeLeon 3304 at the bottom. And I'm
4 referring to the calls ending in 013, for example --
5 or the statements, I should say. And so what Agent
6 Acee has done in a few of these places is handwrite
7 some notes. And that's what the defense will see
8 when they get a look at the notes.

9 A. Mr. Castellano, could I point out something
10 on -- you were just referencing these call numbers.
11 That might be helpful. These are also going to be
12 the devices. So you can identify the device. You
13 would want device 1188; then it's going to be call 11
14 on that device.

15 Q. Okay. So let me turn your attention then
16 to the recording ending 012, the last statement in
17 that portion of the recordings.

18 A. "Pup" suggests that Mario research upcoming
19 meetings or charities that the targets might attend.

20 Q. For what purpose?

21 A. To locate them; that they're -- especially
22 Marcantel, he'd attend various meetings and
23 functions. I added a note there that you'll see when
24 you review this that says, "Pup" encourages Mario to
25 take his time, that it needed to be done right.

1 Q. Next, let me turn your attention to the
2 recording ending in 014 on the same page?

3 A. "Pup" and the CHS are talking about Michael
4 Snow. "Pup" tells the CHS, "Ask him if he could try
5 to get me a cuete. If he could, just get one, and
6 I'll have him give it to somebody." Specifically,
7 "Pup" asks for a revolver.

8 Q. And once again, cuete refers to a firearm?

9 A. Yes.

10 Q. And are you aware of whether or not Michael
11 Snow is a convicted felon?

12 A. He is.

13 Q. Okay. Two bullet points below that it
14 says, "'Pup' asks Snow if he's heard" -- can you tell
15 us the rest of that statement?

16 A. "'Pup' asks Snow if he's heard from Becky,
17 and if she still gets prescriptions for Suboxone.
18 'Pup' tells Snow to acquire some Suboxone strips, and
19 then give them to his hita." And the agent that
20 wrote this puts in parentheses, "Probably Yvonne."

21 Q. Does that refer to the same Yvonne we
22 believe was referenced earlier?

23 A. Yes, Yvonne Griego.

24 Q. And the next calls, do they take place on
25 or about November 4 through November 7, 2015?

1 A. Yes.

2 Q. And that same page, 3304, look at the
3 statement ending in 017, please, and tell us about
4 that?

5 A. "'Pup' wants to send us a message to
6 'Creeper'" -- who we believe was Jerry Armenta's
7 "family that they will be harmed if he testifies for
8 the state. 'Pup' wants the family to know 'Creeper'
9 is fucking up. If he take the stand against this
10 perro, against anybody, we're coming for your ass.
11 'Pup' agrees that Mario is the best person to deliver
12 the message."

13 Q. And can you tell the Court whether at this
14 point the Molina murder was still charged at the
15 state level?

16 A. It was.

17 Q. So when he refers to Jerry Armenta
18 testifying for the state, are we talking about Molina
19 at the state level at that point?

20 A. Yes.

21 Q. Let me turn your attention to DeLeon 3305.
22 Now, these statements are taken around November 13
23 and December 3, 2015.

24 A. They're taken between those dates, yes.

25 Q. Okay. Starting on or about November 13,

1 2015, under recording 001, what is that first
2 statement?

3 A. "'Pup' and CHS are talking with Mario
4 Montoya. 'Pup' says he is working on getting Mario
5 guns."

6 Q. In that call are you aware of what the
7 purpose is of obtaining guns at that point in time?

8 A. Hit Marcantel, Santistevan, Vigil.

9 Q. On DeLeon 3306, please tell us about the
10 statement ending in 005 on that page?

11 A. "CHS read a text message from Chris Garcia
12 to 'Pup.' Chris is nervous about giving guns to
13 Mario because other brothers have been coming to him
14 asking for Suboxone strips for 'Styx.' But then they
15 never send them to 'Styx.' Chris wants "Pup" to make
16 sure Mario is completely on board before he gives
17 them the guns. Chris says, 'So just see what's up.
18 Make sure that everything is going to be good,
19 because these are nice toys. And if they're in the
20 wrong hands and the carnal needs to get right, then
21 those are gone.'"

22 Q. Who is "Styx" referring to?

23 A. Gerald Archuleta.

24 Q. Tell us about the next statement, please.

25 A. "This message from Chris concerns 'Pup.'"

1 'Pup' is getting nervous about too many people
2 knowing about the mission, and says that they just
3 kept only one carnal on it."

4 Q. So what's the concern at that point?

5 A. Too many people know about it.

6 Q. Tell us about the statement ending at
7 statement 006, please?

8 A. "'Pup' is trying to work out what to do
9 with Chris not trusting Mario enough to give him a
10 gun. 'Pup' thinks it may just be best to get Mario
11 money so he can get his own gun."

12 Then I add some comments from my review of
13 the transcripts, which is "'Pup' wants Mario to watch
14 out for cameras." He was real concerned that
15 Marcantel would have cameras on his house. He made
16 the comment, "He needs to make sure he's not wearing
17 a beanie or a mask when he walks up there."

18 Q. Now, the previous two statements that we
19 were talking about ending at 005 and 006, did they
20 take place on or about November 25, 2015?

21 A. Yes.

22 Q. And when we say "on or about," why do we
23 think those dates are approximate or very close to
24 those dates?

25 A. Because I kept reminding the CHS to make

1 sure he's putting dates on there. Because I
2 otherwise have a difficult time figuring out when the
3 conversation takes place. So the CHS would sometimes
4 have a conversation, and then I believe deactivate
5 the device, then turn it back on, so it starts a new
6 entry. And he would say, "That was me and 'Pup' on,"
7 and he would give the date.

8 Q. So that's an example of how the date might
9 be approximate or very close?

10 A. Yes.

11 Q. On the same page, DeLeon 3306, let's
12 start -- I think there are a series of statements
13 there. Let's take them one at a time, ending in 008.

14 A. To put this in context, this is happening
15 on December 3, 2015. "Mario should have done the hit
16 over the night. 'Pup' and CHS are wondering if the
17 feds are going to charge the SNM. 'Pup' talks about
18 the steps the feds would have to take, gather state
19 evidence, bring in STIU and local law enforcement.
20 'Pup' complains about carnals doing interviews for TV
21 shows like Gang Land and MSNBC."

22 Q. Let me stop you there, just so I don't have
23 to keep asking the question. Each time we refer to
24 "Pup" in these statements, are we referring to Mr.
25 Baca?

1 A. We are in the SNM. Although there is
2 members that have the same moniker, I've only come
3 across one that uses "Pup," and that's Mr. Baca.

4 Q. So let me turn your attention to the next
5 statement that begins with "The CHS asked 'Pup' if
6 the SNM will get respect."

7 THE COURT: Could I use this maybe as a
8 break here?

9 MR. CASTELLANO: Anytime you're ready.

10 THE COURT: I'd like to take a 15-minute
11 break, come back in, and go for another half hour,
12 and let everybody go at 5:30. Here's what I'd like
13 to do during the break. Ms. Wild, are you there?

14 THE CLERK: Yes, sir, I am.

15 THE COURT: All right. I'd like for Mr.
16 Lowry, Ms. Armijo, and Mr. Villa to talk to you on
17 the phone. So I'm going to leave it on and you talk.
18 This will be off the record. Y'all just talk. And
19 get you informed, while you were off the phone, they
20 brought some things and concerns to my attention, and
21 then we'll address those afterwards.

22 THE CLERK: All right.

23 THE COURT: Also, I'd like for counsel to
24 talk about what you want me to do. I have signed off
25 on my edits and things for the motion to disqualify.

1 So I'm going to take it back to Albuquerque. It's
2 got some clerk work to do before it's issued. But I
3 hope to get it out. So I'll get that out of the way.
4 And then that should maybe help Mr. Lowry and the
5 Government on their issue.

6 But -- and I'm also 10 pages into Ms.
7 Gutierrez' opinion. So I've got about a 10-page
8 opinion started on that. So I need work. So you
9 tell me what -- I want either three from each side as
10 a batting order, or if y'all can agree, what do you
11 need more from me; what is it you'd like me to be
12 more precise, more accurate, more thoughtful, more
13 detailed, reconsider something. So give me your top
14 three.

15 Mr. Davis, I'll say it now: I don't get
16 any joy out of the entering the order that I'm
17 probably going to enter when I get back to
18 Albuquerque. I respect you a lot. Thank you for
19 your hard work. And if I don't see you again, good
20 luck to you. You and I have done a lot of stuff over
21 the years. So I appreciate all your hard work.

22 MR. DAVIS: Thank you.

23 THE COURT: All right. We'll be in recess
24 for about 15 minutes.

25 (The Court stood in recess.)

1 THE COURT: All right. Everyone be seated.
2 Sounds like everybody had a good conversation. We're
3 back on-track. Everybody is happy and pleased.

4 All right. Has everybody got a lawyer?
5 You don't have all your lawyers. Everybody got a
6 lawyer? All right. Look around, help your
7 colleagues.

8 All right. Mr. Acee, I'll remind you
9 you're still under oath.

10 Mr. Castellano, if you wish to continue
11 your direct examination of Mr. Acee, you may do so at
12 this time.

13 MR. CASTELLANO: Thank you, Your Honor.

14 THE COURT: Mr. Castellano.

15 MR. CASTELLANO: Before I begin with the
16 questioning, would it help the Court for me to mark
17 this document as an exhibit? I mean, we're reading
18 basically verbatim from the docket.

19 THE COURT: I think everybody would like
20 that. Let's go ahead -- it's Government's Exhibit
21 19?

22 MR. CASTELLANO: I think it's 24, Your
23 Honor.

24 THE COURT: You're right.

25 MR. CASTELLANO: And that way the Court

1 will have the statements as well. And I think the
2 copy I have is also the one that has Agent Acee's
3 notes on it. For the record, it's going to be 25.

4 THE COURT: All right. Government's
5 Exhibit 25? Any objections? Hearing none,
6 Government's Exhibit 25 will be admitted into
7 evidence.

8 MR. CASTELLANO: For the record, this is a
9 summary of statements, beginning at DeLeon 3298, at
10 the bottom, Your Honor.

11 BY MR. CASTELLANO:

12 Q. Agent Acee, we were at DeLeon 3306. And
13 under statement heading 008, I want you to talk about
14 the statement which I think is the fifth bullet point
15 down that begins "The CHS asked 'Pup' if the SNM will
16 get respect."

17 A. "The CHS asked 'Pup' if the SNM will get
18 respect from the Mexican Mafia if Mario successfully
19 kills the Secretary and all the carnales get sent
20 into the federal system. 'Pup' responds, 'They
21 already respect us. And with us going over there
22 like that, with that type of fucking charge, oh,
23 yeah, they fucking -- not only them' -- the Mexican
24 Mafia -- 'everybody else respects the fuck out of
25 that shit.'"

1 Q. And since we have more than one Mario
2 mentioned in this case, who is this Mario referring
3 to?

4 A. Montoya.
5 Continuing on?

6 Q. Yes. Next statement, please.

7 A. "'Pup' says that the murder will fucking
8 bring us all kinds of" -- unintelligible -- "fuck --
9 unintelligible -- "get notoriety like fuck. And then
10 all them vatos and the feds will be like, 'Fuck,
11 yeah, you fucker.'"

12 Q. Okay. Next statement, please.

13 A. "'Pup' realizes that once the Secretary is
14 killed, law enforcement will probably identify Mario.
15 'Pup' says that he woke up early this morning to
16 watch the news, and see if the secretary was killed.
17 And also he warned 'Dan Dan' that the feds would be
18 coming after them. CHS explains to 'Pup' how Javier
19 Molina's murder went down. And 'Pup' says, 'That
20 wasn't to happen like that.' CHS says that 'Blue' is
21 upset about how the murder happened. And 'Pup' said
22 he would talk with 'Blue.' CHS asked 'Pup' what
23 'Blue' said when 'Pup' told him they would threaten
24 "Creeper's" -- again, Jerry Armenta's family --
25 "'Pup' responds, 'Oh, he said, 'Fuck, yeah.'"

1 Q. So we have context here, who is "Blue"?

2 A. Mario Rodriguez.

3 Q. And earlier I asked you about a statement
4 where Mr. Baca said not to kill Mr. Marcantel. At
5 this point has he -- in the investigation, has he
6 agreed that Mr. Marcantel should be killed?

7 A. Clearly.

8 Q. Let me turn your attention to the next
9 page, 3307.

10 A. At the top?

11 Q. Yes, please.

12 A. "Pup" is talking about Jerry Armenta
13 testifying. "And his family, his family gets hit.
14 And that shit will hit the news, carnal. And they're
15 going to say the only motive behind that has been
16 because that fucker testified. That shit hits the
17 news, too. That gives us more power. Because of
18 that fact, everybody is going to know, a la verde,
19 they're going to hit my family, I'm never going to
20 tell them."

21 Q. Let me turn your attention to the same
22 page, the statement ending in 010.

23 A. The CHS tells "Pup" that if Mario gets
24 caught, and the news gets out that the SNM hit the
25 Secretary, then the Eme will look at the SNM

1 different. 'Pup' responds, "Hell, yeah, they are."
2 "'Pup" complains to the CHS that 'Dan Dan' is too
3 quick to want to fall under the Eme. 'Pup' views the
4 SNM as equal to the Eme."

5 Q. Let me turn your attention now to the
6 Christopher Garcia Bates stamp 1085 of the
7 transcript. Do you have that with you?

8 A. Yes.

9 MR. CASTELLANO: Your Honor, I'm going to
10 mark this Government's Exhibit 26.

11 THE COURT: Do you want to move its
12 admission?

13 MR. CASTELLANO: I am, Your Honor.

14 THE COURT: All right. Any objection to
15 Government's Exhibit 26? Not hearing any --

16 MR. ADAMS: Not for the purposes of this
17 hearing.

18 THE COURT: For purposes of this hearing,
19 just for here. All right. Not hearing any
20 objection, Government's Exhibit 26 will be admitted
21 into evidence.

22 BY MR. CASTELLANO:

23 Q. In order to lay the groundwork for this
24 exhibit, which I'm putting up on the visualizer --
25 it's Government's Exhibit 26 -- what is the context

1 in which this statement takes place?

2 A. So this is November 29, 2015. The previous
3 evening, Chris Garcia called Mario Montoya and said
4 that he had the gun that was to be used to hit
5 Marcantel. I didn't want to go out in the evening.
6 It's more difficult to do surveillance. So Mario
7 told Chris something, and we set it up for the
8 following day.

9 So this is a transcript from a body wire
10 that Mario wore when he went to Chris Garcia's house
11 to pick up the firearm.

12 MR. CASTELLANO: And for purposes of the
13 James hearing, Your Honor, I'm actually moving in the
14 entire conversation as part of the co-conspirator
15 statements. But I'll just touch on some of these for
16 purposes of testimony.

17 Q. Look at some of the highlighted areas,
18 Agent Acee. There is discussion about a .22 long
19 rifle. What is that referring to?

20 A. Ammunition, a bullet, a cartridge.

21 Q. A .22 long rifle cartridge goes in what
22 type of firearm?

23 A. A .22 caliber firearm.

24 Q. And was there a firearm turned over from
25 one person to another on that date?

1 A. Yes. Chris Garcia gave Mario Montoya a .22
2 caliber semi-automatic pistol.

3 Q. For what purpose?

4 A. To kill Gregg Marcantel.

5 Q. Okay. And can you tell the Court what this
6 reference is regarding the clip?

7 A. He's referring to the magazine. He says,
8 "Well, the firearm didn't have a magazine. It needs
9 a magazine to be fully loaded." So what Garcia is
10 explaining to Montoya is: "Put the bullet in the
11 fucker and then you can shoot it. Or you can get a
12 clip and, you know, do it the right way. Order a
13 clip."

14 Q. Down here -- this is on page 1086 at the
15 bottom of this exhibit, there is a reference to
16 somebody named "Chuco." Can you tell us who that
17 person is?

18 A. That's Mandel Parker.

19 Q. And can you tell the Court whether Mandel
20 Parker became part of this conspiracy?

21 A. He did.

22 Q. What was the context in which he became
23 involved?

24 A. Mario Montoya contacted SNM members on the
25 street, explained the mission that he was on.

1 "Chuco" volunteered, and was actually eager to help.

2 Q. Did he show his interest in joining the
3 conspiracy to murder Gregg Marcantel?

4 A. Enthusiastically.

5 Q. On the next page at the bottom is 1087.
6 Tell us about the discussion here with the word
7 feria?

8 A. So here, the CHS is expressing some concern
9 that -- well, one he's trying to get some money out
10 of this. And then I think that he's kind of
11 negotiating that he should get some money because
12 Marcantel is a, quote, "big motherfucker." And at
13 this point he's been given a .22 to kill him that can
14 only hold one bullet.

15 Q. And so is there a concern that one .22
16 caliber round won't do the job for someone as big as
17 Mr. Marcantel?

18 A. Yes.

19 Q. And what's the discussion in here about
20 River's Edge 3?

21 A. This is where the CHS is reporting that --
22 kind of how he's going to do the hit. They've done
23 their reconnaissance or their scouting. And he's
24 saying that Marcantel, he has two big old dogs. He
25 lives over there on River's Edge 3. That's a housing

1 neighborhood off -- I think it's off 528 in either
2 Rio Rancho/Bernalillo area. And he's just saying
3 that he walks the dogs two or three times a week, and
4 that that would be a good place to hit him.

5 Q. And you see further discussion about
6 killing Santistevan, the question by Mr. Garcia?

7 A. Yes.

8 Q. And if you recall from this conversation,
9 you know what they're talking about when they talk
10 about giving him a double, and leaving him with
11 everything?

12 A. Yes. They're talking about killing Mandel
13 Parker, and then leaving the murder weapon and any
14 other evidence with Parker, so it looked like he did
15 it.

16 Q. On the next page at the bottom, it's 1088.
17 Is there -- the word "gauge" is used there. Do you
18 remember what the discussion referred to at that
19 point?

20 A. Yes. Chris Garcia said that when Montoya
21 expressed some concern about it just being a .22,
22 Garcia said that he also had a shotgun, but he needed
23 more time to get it. I think he said it was at his
24 brother's house. And so he said he'd get the gauge
25 too. It was a good one. He actually did follow up

1 and tell -- send Mario either a phone call or a text
2 message saying that, Hey, he had the gauge, do you
3 want to come get it.

4 Q. And what ultimately happened there?

5 A. Well, we didn't, because we ended up
6 arresting everybody.

7 Q. Now, turning to page 1090 of the exhibit.
8 Some discussion about somebody eating at Barelas
9 Cafe. How can you put that in context for us?

10 A. This is where Chris Garcia is telling the
11 CHS that he saw Marcantel eating, and that he
12 couldn't believe it. He was at the Barela's Cafe.
13 He was eating by himself. And then later on down
14 there, where you have the highlighted, it says, "He
15 carries a cuete, too." Garcia is telling the source
16 that he carries a gun also, he being Marcantel.

17 Q. Once again, what does the word cuete refer
18 to?

19 A. A gun.

20 Q. And at the bottom of the page under the
21 next page it says, "That's the one I'm going to send
22 'Pup' out of the state." Who is that referring to?

23 A. That's referring to Marcantel. After the
24 Javier Molina murder, Marcantel is regarded by the
25 SNM and being responsible for sending "Pup" and Mr.

1 Sanchez and others out of state.

2 Q. Okay. Can you put the rest of the
3 conversation in the context for us? Go ahead and
4 take a chance -- a moment to look it over.

5 A. Do you want me to start at the top?

6 Q. Sure.

7 A. So where he says him and Myers -- I think
8 the CHS actually made a mistake. At the time it was
9 a little bit comical, because Myers' name never came
10 up he's one of the task force guys.

11 Q. Who is Myers?

12 A. It's Mark Myers. At this time he was the
13 Deputy Secretary. I think they later changed his
14 title to Chief of Staff. But he's a Deputy Secretary
15 under Marcantel. Marcantel being the victim in the
16 case, we never went to Marcantel for stuff. Myers
17 was our point of contact for Corrections. And so
18 here --

19 Q. What else was discussed?

20 A. So this is just Mario Montoya, the CHS, and
21 Chris Garcia talking about -- they're talking about
22 what "Pup" wanted, what "Pup" -- excuse me, what Mr.
23 Baca's instructions were to Mario. And they're
24 talking about the neighborhood. They're talking
25 about the gun. It looks like the fourth block down

1 it says, "See if I get this clip. If not, um, let me
2 get that gauge, too. What he's saying is if I can
3 order the clip in time for the magazine for this .22,
4 sure. Otherwise, let me get the gauge.

5 And I had instructed Montoya to get
6 whatever Garcia was providing for this. It didn't
7 matter what they were.

8 Q. What was Mr. Garcia's response?

9 A. He says, "Yeah, that gauge, that gauge is
10 perfect. You could even tell what's his name where
11 it's at." Some of that is unintelligible. "If
12 you're around the neighborhood where he walks the
13 dogs, there is going to be cameras." And Garcia is
14 just warning them, "I have cameras at my pad."

15 The CHS goes on to say, basically he
16 scouted it. "There is a back way in. It's down
17 there by the bosque." I think what he's referring to
18 is below River's Edge is the Rio Grande River, so
19 there are some walking trails and stuff like that.

20 Q. What is Mr. Garcia's suggestion about going
21 to the barber shop and getting hair?

22 A. You know, I'm actually -- I have reviewed
23 this, but that's not -- I guess he's making reference
24 to going to the barber shop to get some hair. Act
25 like they had to use the restroom, and then maybe put

1 it in your pocket and leave, to leave at the crime
2 scene, somebody else's hair. That's what I'm
3 discerning from that.

4 Q. So, in other words, if you left someone's
5 hair at the scene, would that provide a DNA sample of
6 other people?

7 A. Yes. Either that or even attaching someone
8 else's hair to your head. Either way, it's to throw
9 off the crime scene.

10 Q. At this point the whole statement is in,
11 but I'm going to ask you to look at the statement,
12 take a moment, and highlight for us the remaining
13 portions that are important to you.

14 A. Do you want me to do that on my copy?

15 Q. Yes. Take a moment, and then you can tell
16 us what page you're on, and then we'll go to the
17 statement.

18 A. I think I only had maybe a couple.

19 Q. Tell us the page number, please.

20 A. 1088.

21 Q. 1088?

22 A. Yes. Halfway down the page.

23 MS. SIRIGNANO: What page, please?

24 MR. CASTELLANO: 1088. I'll back out so
25 you can see the whole page.

1 Q. Okay. Go ahead.

2 A. I would start there where the arrow is. It
3 says -- this is Garcia talking and there is some
4 overlap. He's talking about what I believe is a
5 light affixed to the shotgun. He says, "This fucker
6 is bright. You turn the bright on it, and I swear to
7 God, the light on it is bright as fuck. And" --
8 unintelligible -- "during the daytime, like that,
9 where the, where the" -- unintelligible -- "I got
10 it" -- unintelligible -- "it's a pretty bright
11 light." He goes on to say, "You know what I mean
12 brights" -- and the something -- and so the CHS and
13 Garcia are kind of interacting how to come up with
14 this light affixed to it, I believe, and approach
15 somebody, and all they can see is the light and then
16 you see it says, "Boom!" there.

17 So that's based on my listening live at the
18 time, reviewing this, and then debriefing the source
19 immediately after, that that's what they were talking
20 about.

21 The next one, I would turn the page to
22 1089. This was -- this stood out with me starting at
23 the top where they're talking about Andrew. And
24 that's Andrew Romero. Now, he's not a defendant in
25 this case. He was just convicted in the state of

1 murdering the Rio Rancho Police Officer. And shortly
2 after that he was brought into the SNM, while he was
3 incarcerated at Central. And there has been some
4 disagreement among members on whether or not he
5 should be in or not, because he may have been a rat
6 before. And that's what they're talking about here.
7 But there is other conversation where that murder of
8 that cop may have made him a good guy.

9 THE COURT: Mr. Castellano, is this a good
10 place for us to close for the evening?

11 MR. CASTELLANO: It's fine, Your Honor.
12 There are just a couple pages. But I'm happy to
13 conclude now. And we can start again next week.

14 THE COURT: Let's do that. We'll kind of
15 keep everybody on schedule.

16 Did y'all come up with a batting order for
17 me to take back to Albuquerque? Anybody want to
18 propose what they want me to work on? Mr. Lowry?

19 MR. LOWRY: No, Your Honor. I think we
20 worked out a schedule, if you talk to Ms. Wild.

21 THE COURT: You told her what you want me
22 to work on opinion-wise, orders?

23 MR. VILLA: No, Your Honor. I think the
24 discussion we had was about scheduling. But in
25 terms --

1 THE COURT: I wanted everybody during the
2 break to do that. Well, listen, y'all stay here and
3 work out a batting order. Call Ms. Wild and tell me
4 what you want me to work on, so when I get up to
5 Albuquerque, I can finish up the Davis opinion,
6 finish up the Gutierrez opinion, and then I get
7 started, so can I keep things moving.

8 All right. I appreciate your hard work.
9 Be safe on your trips. Good to see everybody. We'll
10 see everybody at 9:00 on Thursday morning.

11 (The Court was adjourned.)
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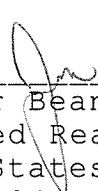
C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on December 6, 2017.



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